1.1 Arthur has recently bought and moved into a house near the centre of town. In Arthur’s street there are several other houses as well as a couple of small businesses and a church. The church has a bell tower attached to it. The bells inside this tower ring every fifteen minutes 24 hours a day: the bells chime part of a tune every quarter of an hour and the full tune every hour, followed by the number of chimes of the hour concerned.

Unfortunately, Arthur finds the ringing of the bells to be extremely annoying. They disturb his sleep and as a result he feels constantly tired and is unable to concentrate on his work. Arthur has accordingly approached the church and asked that the bells be switched off every night between 22h00 and 05h00.
The church has, however, refused to do so for the following reasons: (a) the bells have been ringing in this way for nearly one hundred years; (b) none of the other residents in the street has ever complained about the noise; and (c) it would be very expensive to change the timing mechanism in the bell tower.

Arthur has now approached you for advice. He wants to know if the noise made by the bells may be classified as a nuisance. Advise him. (25 marks)

AND

1.2 Dikgang recently bought and moved into a house in Scottsville. The neighbouring property belongs to Bess. Both properties are situated on a slope and Bess’s property is situated higher on the slope than Dikgang’s. After moving into his house, Dikgang built a concrete wall along the boundary between his and Bess’s property.

Shortly after he had finished building the wall, Bess approached Dikgang and informed him that it was interfering with the natural flow of water from her land to his and that every time it rained the rainwater would dam up on her side of the wall.

Bess also told Dikgang that it was unlawful to interfere with the natural flow of water from one piece of land to another and that he was, therefore, obliged to insert pipes into the wall so that the water could flow from her property onto his.

Dikgang has now approached you for advice. He wants to know if Bess is correct. He also tells you that Bess’s house covers about 50 percent of her land and that the area between her house and the concrete wall is covered by a swimming pool, brick paving and a cultivated garden. Advise him. (15 marks)
QUESTION 2 (40 MARKS)

2.1 Kate is a dealer in second-hand motor vehicles in Pietermaritzburg. Four months ago she sold a car to Sandile. At the time of the sale, Kate explained to Sandile that the sale was for cash. Sandile agreed to pay cash for the car. He then gave Kate a currently-dated cheque for the purchase price. The cheque was drawn on a bank located in Durban. Kate deposited the cheque into her bank account on the same day. A week later the cheque was returned to Kate marked “Return to Drawer: Insufficient Funds”. Kate put the cheque in her desk drawer and since then she has done nothing about the matter. She now wants to know whether she can reclaim the motor car from Sandile using the *rei vindicatio*. Advise her. (20 marks)

AND

2.2 Sandile borrows Yvonne’s car for the weekend. On Saturday, while the car is still in Sandile’s possession, Yvonne is approached by Tholie who offers to buy the car from her for R80 000. Yvonne accepts the offer and Tholie gives her a post-dated cheque for the full amount. The cheque becomes payable on the Friday of the following week. On Sunday morning, Yvonne phones Sandile and informs him that she has sold the car to Tholie and that he must deliver the car to Tholie and not to her. Sandile agrees to do so. After putting down the telephone Sandile goes out to collect the car. He then discovers that it has been stolen. The theft took place some time on Saturday night. On Wednesday Tholie discovers the car in the possession of John. Tholie now wants to know whether he can reclaim the car from John using the *rei vindicatio*. Advise him. (20 marks)
QUESTION 3 (40 MARKS)

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

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

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

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

Msunduzi Investments wants to evict the unlawful occupiers. The company would, therefore, like to apply for an eviction order in terms of section 4 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998. Before launching such an application, however, the company wants to know whether a court would grant it an eviction order. Advise it. (40 marks)
SECTION B (50 MARKS)

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 4 (25 MARKS)

4.1 Ownership has traditionally been defined as an “absolute”, “exclusive” and “abstract” right in South African law. Write a note in which you explain what is meant when ownership is referred to as an “absolute”, “exclusive” and “abstract” right. (9 marks)

AND

4.2 The traditional definition of ownership as an absolute, exclusive and abstract right has been criticized on the grounds that it is “inaccurate”, “misleading” and “inappropriate”. Write a note in which you explain why the traditional definition of ownership has been criticized on the grounds that it is “inaccurate”, “misleading” and “inappropriate”. (9 marks)

AND

4.3 In light of the criticisms leveled at the traditional definition of ownership, some academic commentators have argued that the right of ownership, and in particular the right of land ownership, should be re-conceptualised so as to embody a socially responsible ethic (see, for example AJ van der Walt “The effect of environmental conservation measures on the concept of land ownership” 1987 SALJ 469). Write a note in which you explain how the right of land ownership may be re-conceptualised so that it may embody a socially responsible ethic. (7 marks)
QUESTION 5 (25 MARKS)

“The approach to be followed in determining whether a movable has acceded to an immovable, and the elements necessary to constitute such accession, is still the subject of debate, both in terms of academic commentaries . . . and case law.”


Write an essay in which you set out and discuss the elements the courts take into account when determining whether a movable has acceded to an immovable by means of inaedificatio. In your essay you must also explain what is meant by the “traditional approach” and the “new approach” to inaedificatio. (25 marks)

QUESTION 6 (25 MARKS)

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

Write an essay in which you discuss the general requirements for the derivative acquisition of ownership. In your answer you must also discuss the distinction drawn between the causal and abstract systems of transferring ownership. You must also indicate which system is applied in South African property law and discuss the judgment in Legator McKenna Inc v Shea 2010 (1) SA 35 (SCA). (25 marks)