SECTION A

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 1

Cool Air is a company that manufactures and installs air conditioning systems in large buildings. They clearly state in all their contracts that the air conditioning systems that they install remain their property until paid for in full, with a right of removal if the buyer fails to pay for the air conditioning system within the stipulated time. Cool Air recently entered into such a contract with the builders of a new shopping centre, in terms of which they installed an air conditioning system at a cost of R 2 500 000. In terms of this agreement, the builder was given three months within which to pay for the air conditioning system. Cool Air has recently heard that the builders are in financial trouble, and they approach you for advice. They want to know whether they will be able to remove the air conditioning system if they are not paid.

Cool Air tells you that the air conditioning system consists of a large refrigerating unit, measuring four metres by four meters at the base, and standing three metres high. This unit rests by its own weight on a specially prepared concrete base. It is possible to remove the refrigerating unit, but a large and specialized crane is needed to achieve this. The refrigerating unit is also connected to the electricity and water supply to the building. The rest of the system is made up of about 150 metres of light steel tubing and ducting that is interwoven throughout the building as well as individual cooling units in each shop. The tubing and cooling units can be removed intact, but many large and unsightly holes will be left in the walls and the ceilings of the building. Cool Air also tells you that the air conditioning system is a vital part of the ventilation of the shopping centre, and if it is removed, the shoppers in the shopping centre will be very hot and uncomfortable.

Advise Cool Air as to whether the cooling system has acceded to the shopping centre or not.

(40 marks)
QUESTION 2

Answer question 2.1 and 2.2

2.1 Zak borrows John’s motor-car for the weekend. He enjoys driving it so much that on Monday he meets John and offers to buy it from him for R50 000. John accepts the offer and Zak gives him a post-dated cheque for the full amount. The cheque becomes payable on the Friday of that week. On Wednesday Chris steals the car and sells it to Belinda, an innocent buyer. Zak later discovers that the car is in Belinda’s possession. Zak now wants to whether he can reclaim the car from Belinda using the *rei vindicatio*. Advise him.

(15 marks)

2.2 Kate owns an oat crusher (a machine that crushes raw oats). She places an advertisement in the local newspaper offering to sell her oat crusher. Sandile, who owns a mill, sees the advertisement and approaches Kate. After inspecting the oat crusher, he offers to buy it from her for R250 000. Kate accepts the offer and Sandile immediately hands over a cheque for the full amount of the purchase price. After handing over the cheque, Sandile asks Kate if he can leave the oat crusher on her farm while he makes arrangements to transport it to his mill. Kate, who owns a large flatbed truck, then offers to transport the oat crusher to Sandile’s mill in return for a small fee. Sandile accepts this offer and leaves the oat crusher with Kate. Sandile does not hear from Kate again, and after a month has passed he travels out to her farm to see what has happened to the oat crusher. When arrives at the farm, he discovers that Kate has been declared insolvent. He also discovers that, before she was declared insolvent, she sold and delivered the oat crusher to her neighbour, Dikgang. Dikgang refuses to hand the oat crusher over to Sandile. Sandile now wants to know whether he can reclaim the oat crusher from Dikgang using the *rei vindicatio*. Advise him.

(25 marks)

QUESTION 3

Sydney owns a motor car that he wishes to sell. He takes the motor car to “Bess’s Best Motors”, a second hand car dealership. Bess tells Sydney that she is not interested in buying his motor car, but that she is prepared to help him find a buyer by displaying the motor car on her showroom floor, together with her other stock-in-trade. Sydney agrees to this and leaves his motor car with Bess. Before leaving, however, he tells Bess that she must contact him if anyone is interested in buying his car. This is because he first wants to approve the deal.

Sydney does not hear from Bess again and after a month has passed he decides to visit her. When he arrives at the dealership, Sydney is shocked to discover that Bess has left the country. Upon making further enquiries, Sydney finds out that Bess has sold the motor car to Edwin. He also finds out that Edwin has paid Bess for the motor car and that Bess has pocketed the money.

Continued…/
Question 3 continued…

Sydney does not wish to claim the purchase price from the insolvent estate. Instead, he wants to recover the motor car from Edwin. Edwin, however, has refused to hand the car over. Sydney now wants to know whether he can reclaim the motor car from Edwin using the _rei vindicatio_. Advise him.

(40 marks)

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 4

Answer question 4.1, 4.2 and 4.3

4.1 Both the Sectional Titles Act 66 of 1971 and the Sectional Titles Act 95 of 1986 made several changes to the common law principles of ownership that had previously inhibited the introduction of sectional ownership in South Africa. Write a note in which you set out and discuss the changes which these Acts made to the common law principles of ownership so as to make sectional ownership possible in South Africa.

(8 marks)

4.2 A section title unit may be defined as a “composite immovable thing” consisting of a “section” together with an “undivided share in the common property” which is apportioned on the basis of a “participation _quota_”. Write a note in which you explain why a sectional title unit may be defined as a “composite immovable thing”. In your answer you must also explain what is meant by: (a) a section; (b) the common property; and (c) the participation quota.

(12 marks)

4.3 The control and management of a sectional title scheme is placed in the hands of a central management body known as the body corporate. Write a note in which you explain: (a) when the body corporate comes into existence; (b) who the members of the body corporate are; and (c) why the body corporate is considered to be a juristic person.

(5 marks)
QUESTION 5

“Acquisitive prescription may be defined from the point of view of its requirements, possibly as follows: A person who possesses a thing openly and as if he or she were the owner, for an undisturbed period of thirty years, may become owner by prescription.”

See D L Carey Miller *Land Title in South Africa* (2000) at 160.

Write an essay in which you explain what is meant by the requirement that a person must *possess* a thing in order to become the owner of that thing by prescription. In your answer you must discuss the possession requirement in terms of both the Prescription Act 18 of 1943 and the Prescription Act 68 of 1969.

(25 marks)

QUESTION 6

“In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.”

See *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) per Sachs J at para 43.

Write an essay in which you discuss the approach the Constitutional Court has adopted towards the eviction of “relatively settled occupiers” in light of its judgments in *Government of the RSA v Grootboom* 2001 (1) SA 46 (CC); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); and *President of the RSA v Modderklip Boerdery (Pty) Ltd* 2005 (5) SA 3 (CC).

(25 marks)