SECTION A (80 MARKS)

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 1 (40 MARKS)

Answer both Question 1.1 and Question 1.2

1.1 Ishmail owns a game farm in the KwaZulu-Natal midlands. He keeps the following types of animals on the farm: impala, kudu, ostrich and wildebeest. Ishmail keeps the impala and kudu for commercial and hunting purposes, the ostrich for security purposes and the wildebeest for scientific and research purposes. All of the animals are allowed to roam freely on the property. This is because the entire property is enclosed with a game fence, and the fence is well maintained.

Following a particularly severe thunderstorm, however, a part of the fence collapsed and four kudu, three ostrich and two wildebeest wandered onto the neighbouring farm. The owner of the neighbouring farm, Bess, captured all of these animals and placed them in a secure kraal from which they could not escape.

When Ishmail discovered that his animals were in Bess’s control, he demanded that Bess return them to him. Bess, however, refused to do so. She claimed that she is the owner of these animals and that she does not have to return them. Ishmail now wants to know if Bess is correct. Has she acquired ownership of these animals? Advise him. (25 marks)
1.2 Richard is a licenced salvor. While diving off the coast of Port Shepstone he discovered the wreck of an abandoned ship known as the Argonaut. Much to Richard’s delight he noticed that the wreck still had four brass propellers attached to it. Unfortunately, Richard could not salvage these propellers immediately. This is because he did not have the necessary equipment with him. Instead of removing the propellers, therefore, he engraved his initials on each of them using a diving knife. He also carefully noted the position of the wreck on his map intending to return later.

When Richard returned two days later, however, he discovered that the propellers had been cut off and removed by another salvor called Zac. Richard then told Zac that the propellers belonged to him and he asked Zac to hand the propellers over. Zac, however, refused to do so. Zac denied that Richard was the owner of the propellers. Instead, Zac claimed that he was in fact the owner of the propellers. Richard now wants to know if Zac is correct. Who is the owner of the propellers? Advise him. (15 marks)

QUESTION 2 (40 MARKS)

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 Yvonne, an innocent buyer. Zak later discovers that the car is in Yvonne’s possession. Zak now wants to whether he can reclaim the car for Yvonne using the rei vindicatio. Advise him. (15 marks)

2.2 Kate owns an oat crusher (a machine the crushes raw oats). She places an advertisement in the Farmer’s Weekly 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 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 arranges transport. 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 collect the oat crusher. When arrives at the farm, he is shocked to discover that Kate has left the country. He also discovers that she has 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 (40 MARKS)

Sydney owns a motor car that he wishes to sell. He takes the motor car to “Kate’s Kars”, a second-hand car dealership. Kate 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 his motor car on her showroom floor, together with her other stock-in-trade. Sydney agrees to this and leaves his motor car with Kate. Before leaving, however, he tells Kate that she must contact him if anyone is interested in buying his car. This is because he wants to approve the deal.

Sydney does not hear from Kate again and after a month has passed he decides to visit her. When he arrives at the dealership, he discovers that Kate has been declared insolvent. Upon making further enquiries, Sydney finds out that Kate has sold his motor car to Edwin. He also finds out that Edwin had paid Kate in cash for the motor car, but Kate failed to contact Sydney or to hand over the purchase price.

Sydney does not wish to claim the purchase price from the insolvent estate. Instead, he wants to recover his motor car from Edwin. Edwin, however, has refused to hand the car over. Sydney now wants to know whether he can reclaim his motor car from Edwin using the *rei vindicatio*. Advise him. (40 marks)

SECTION B (50 MARKS)

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 4 (25 MARKS)

4.1 Section 25(1) of the Constitution of the Republic of South Africa, 1996 provides that “[n]o one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”

In light of the Constitutional Court’s judgment in *First National Bank of South Africa Ltd t/a Wesbank v Commission of the SARS* 2002 (4) SA 768 (CC), write an essay in which you set out and discuss:

(a) what is meant by the concept of a “deprivation”; (5 marks) and
(b) what is meant by the concept of an “arbitrary” deprivation. (10 marks)
4.2 Section 25(2) of the Constitution of the Republic of South Africa, 1996 provides that “property may be expropriated only in terms of law of general application (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court”.

In light of the Constitutional Court’s judgment in Reflect All 1025 v MEC, Public Transport 2009 (6) SA 391 (CC), write a note in which you set out and discuss what is meant by an “expropriation”. In your answer you must explain why it is important to distinguish between deprivations and expropriations. You must also set out and discuss the criticisms that have been leveled against the manner in which the Constitutional Court has defined “expropriations”. (10 marks)

QUESTION 5 (25 MARKS)

“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 DL 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 (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).