

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER – MAY 2018
LLB I & DIP. LAW I IDE

TITLE OF PAPER : **ROMAN LAW II**
COURSE CODE : **IDE- LAW108**
TIME ALLOWED : **THREE (3) HOURS**
MARKS : **100**
INTERNAL EXAMINER : **B.S. SENGWAYO**
INSTRUCTIONS : **(a) ANSWER ANY FOUR (4) QUESTIONS**
(b) ALL QUESTIONS CARRY EQUAL MARKS

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INVIGILATOR**

QUESTION 1

Write Short notes on the following:

- (a) *Interdictum uti possidetis* [5 marks]
- (b) Corporeal things (*res corporales*) and incorporeal things (*res incorporales*) [5 marks]
- (c) Replaceable things (*res fungibles*) and non-replaceable things (*res non fungibles*) [5 marks]
- (d) Single and joint or composite things [5 marks]
- (e) Divisible and indivisible things [5 marks]

[TOTAL: 25 Marks]

QUESTION 2

Sputnik, is a renowned afro-pop music artist and a top-drawer fashion model. For his silhouette, he has his long trusted barber, Sparks to thank. One day, while Sputnik was having his trademark Mohawk hairstyle trimmed, he notices Sparks sweep, pick up and put his hair follicles and other molecular remains into his (Spark's) waist bag. Sputnik quizzes Sparks about this, and the latter responds by saying that "ah, boss you know that a man has to fortify some time."

Sputnik laughs and cautions Sparks by saying that - "you live by the voodoo, you die by the voodoo!" (In all the 10 years of hair-cutting friendship previous to this incident, Sputnik had never cared about the disposal of his hair).

Sputnik immediately thereafter protested stating that he owned the hair and that he wanted it back. Sparks vehemently refused and dashed out of the shop to meet and sell it (for E5000) to another friend, Brazo, who had desperately wanted the hair in order to use it for lucky charms. In fact, Brazo had been advised by his diviner to take Sputnik's hair and weave it into his dreadlocks with a certain oil concoction for him to have the same fame and fortune as Sputnik. Additionally, this would also help heal his scalp cancer.

Drawing on relevant principles of the Roman law of things/ property and classification therein, determine the prospects of a suit by Sputnik against Brazo for the latter's conduct.

[25 Marks]

QUESTION 3

Critically discuss the case of *REGAL V AFRICAN SUPERSLATE (PTY) LTD* 1963 (1) SA 102 (A) in relation to the concept of ownership under Roman law.

[25 Marks]

QUESTION 4

Brutus, a Roman citizen, is the owner of a big farm near Rome. Marble is discovered on the farm and he decides to start exploiting it commercially. This results in large-scale excavations and the Arno River, which runs across his farm and was formerly used by his neighbour (Julius) to irrigate his lands, dams up as a result of the silt and waste. Could Julius expect Brutus to cease his activities or arrange for the normal flow of the river to be restored?

[25 Marks]

QUESTION FIVE

In the case of *Chetty v Naidoo* 1974 (3) SA 12 (A), Jansen JA mentioned the following:

“It is inherent in the nature of ownership that possession of the *res* (thing) should normally be with the owner and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, needs... more than to allege and prove that he is the owner and that the Defendant is holding the *res* – the *onus* being on the defendant to allege and establish any right to continue to hold against the owner.”

Critically discuss.

[25 Marks]

END OF EXAM