Answer:

The applicable case here is *R v Mafohla* (1958 (2) SA 373 (SR)).

The question asks of you to indicate whether the state will be able to prove that S was the owner of the kudu.

According to the decision in *R v Mafohla* (1) S would not be the owner of the kudu. (1) That is so because S could not have become the owner of the kudu by means of appropriation. (1) Appropriation or occupation is an original method of acquisition of ownership which can be defined as the unilateral taking of physical control (1) of a thing which does not belong to anyone, (1) but which is within the sphere of law (1) with the intention of becoming its owner. (1) (Study Guide pg 92-93)

The element which causes a problem for purposes of this question is the control element. Physical control is essential for the acquisition of ownership by means of appropriation. Where wild animals are wounded, but actual physical control is not taken, appropriation does not take place. (1) The physical control element refers to the physical or actual control exercised over the thing. The degree of actual contact required for physical control to be established is usually greater in the case of movables such as the kudu. (1) The state will therefore not succeed, because S never took control of the kudu. (Study guide pg 189)
Discuss the Aquilian action as an action for the protection of possession and holdership, under the following headings:

(i) nature of the action (1)
(ii) who can claim? Motivate your answer. (3)
(iii) against whom action can be instituted? (2)
(iv) what can be claimed? (1)

Answer

(i) The aquilian action is a delictual action. (1)

(ii) Modern law recognises that other persons besides the owner may have a patrimonial interest in the thing or in control of the thing, and therefore owners, (1) lawful holders (1) and bona fide possessors (1) can institute this action.

(iii) A person who has culpably (1) and unlawfully (1) damaged the thing can institute the action.

(iv) Damages can be claimed. (1) (Study Guide pg 215)