**INTRODUCTION**

The Law of Property A is a semester-long course that counts as a credit in the Faculty of Law for LLB2 and as one of the courses for Legal Theory 3 in the Faculties of Humanities, Science, and Commerce.

**PURPOSE AND INTENDED OUTCOMES:**

* + an introduction to the meaning of **“property”**; the function and place of property law in South Africa; and the scope and sources of South African property law;
  + an understanding of the definition, characteristics and classification of **“things”**;
  + the ability to distinguish between **real and personal rights**;
  + an understanding of the content and forms (including alternative forms) of **ownership** and the ability to use this knowledge to solve problems;
  + an understanding of the constitutional and private law **limitations that are placed on ownership** and the ability to apply the general principles of these limitations to factual scenarios;
  + an introduction to the **original and derivative forms of acquiring property** in South African property law; and
  + the ability to **choose the appropriate remedy** to resolve property disputes

**Credit Value = 10 credits**

* + This is based on 100 "notional hours" that a student would spend in lectures, working on an assignment, and studying for tests/exams over the course of the semester.

**LECTURER CONTACT DETAILS**

Lectured by: Ms. Ona Xolo

Email: [o.xolo@ru.ac.za](mailto:o.xolo@ru.ac.za)

(Please schedule all consultations via email)

**TEACHING METHOD**

The lectures will be guided by a discussion of the law as found in the primary sources, such as the prescribed textbook (and alternatives\*), case law, and legislation. Students are encouraged to read the chapters outlined for the course in order to prepare for and actively participate in the lecture. Students are expected to take their own notes and to contact the lecturer if they have any questions.

PowerPoint presentation slides will be uploaded at least twice a week (with and without audio). Students will be given a general note for each lecture week to get an idea of what will be covered, as well as the required reading list for the course.

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| **Thursday** | **Friday** |
| Property A (12.20 – 1.05) | Property A (7.45 – 8.30) |

\*LT3 Lecture Uploading Schedule: 1st Semester 2022 – uploaded on RUConnected

Property A is intended to encourage the application of legal principles to the resolution of complex property law problems. It is critical that you use critical thinking to find appropriate solutions for your clients.

Throughout the semester, there will be optional **Tutorials**. Students are strongly encouraged to attend in order to gain invaluable insight into the application of theory covered in formal lectures. The tutorials will also provide additional insight into assessment techniques via **problem-solving scenario questions**.

**CONTENT OUTLINE**

* 1. **Introduction: Outline of the law of property [Chapter 1]**

Meaning of “property”

Function and place of property law

Scope and sources of property law

* Van der Walt AJ *Property and Constitution* (PULP, 2012) 19–43.
  1. **The legal concepts of property [Chapter 2]**

Characteristics and definition of things

Classification of things

* *Fredericks v Stellenbosch Divisional Council* 1977 (3) SA 113 (C)
* *Rikhotso v Northcliff Ceramics (Pty) Ltd and Others* 1997 (1) SA 526 (W)
* *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality and Others* 2007 (6) SA 511 (SCA)
  1. **The Concept of Rights [Chapter 3]**

Conventional categories of rights

The distinction between real rights and personal rights

* *Ex parte Geldenhuys* 1926 OPD 155
* *Lorentz v Melle* 1978 (3) SA 1044 (T)
* *Pearly Beach Trust v Registrar of Deeds* 1990 (4) SA 614 (C)
* *Cape Explosive Works v Denel (Pty) Ltd* 2001 (3) SA 569 (SCA)
* Sections 16 and 63(1) of the Deeds Registry Act 47 of 1937

The Principle of Publicity and

The Doctrine of Notice \**(please note that these two concepts must be understood together)*

* 1. **General principles of ownership [Chapter 5]**

Content of ownership

* *Gien v Gien* 1979 (2) SA 1113 (T)
* *Evkom v Fourie* 1988 (2) SA 627 (T)
* *Pretorius v Nefdt and Glas* 1908 TS 854
* Visser DP "The 'absoluteness' of ownership: The South African common law in perspective" (1985) Acta Juridica 39–52
* Dyal-Chand R “Sharing the cathedral” (2013) 46 *Connecticut LR* 649–683

Various forms of ownership

Alternative forms of title

* The Sectional Titles Act 95 of 1986
  1. **Limitation of ownership [Chapter 6]**

Constitutional limitations:

* *First National Bank of SA Ltd t/a Westbank v Commissioner of the South African Revenue Service; First National Bank of SA Ltd t/a Westbank v Minister of Finance* 2002 (4) SA 768 (CC)
* *Du Toit v Minister of Transport* 2003 (1) SA 586 (C)
* *Steinberg v South Peninsula Municipality* 2001 (4) SA 1243 (SCA)
* *Arun Properties Development (Pty) Ltd v City of Cape Town* [2014] ZACC 37 (15 December 2014)
* *Lucas v South Carolina Coastal Council* 505 US 1003 (1992) (United States of America)
* *Hewlett v Minister of Finance* 1982 (1) SA 490 (ZSC)
* *Chairman, Public Service Commission v Zimbabwe Teachers Association* 1997 (1) SA 209 (ZSC)
* *Mamahule Communal Property Association and others v Minister of Rural*

*Development and Land Reform* 2017 (7) BCLR 830 (CC)

* *Reflect-All 1025 CC v MEC for Public Transport, Roads and Works, Gauteng Provincial Government* 2009 (6) SA 391 (CC)
* *Offit Enterprises (Pty) Ltd v Coega Development Corporation (Pty) Ltd* 2011 (1) SA 293 (CC)
* *Salem Party Club and others v Salem Community and others (Association for*

*Rural Advancement as amicus curiae)* [2017] JOL 39369 (CC)

* *Baron and others v Claytile (Pty) Ltd and another*2017 (10) BCLR 1225 (CC)
* *Ashanti Wine & Country Estate (Pty) Ltd v Smith and others*[2017] 3 All SA 709 (LCC)

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Private law limitations:

*Encroachment*

* Van der Walt AJ *The Law of Neighbours* (Juta & Co., 2010) 132–165
* *Naudé v Bredenkamp* 1956 (2) SA 448 (O)
* *Smith v Basson* 1979 (1) SA 559 (W)
* *Cosmos (Pvt) Ltd v Phillipson* 1968 (3) SA 121 (R)
* *Rand Waterraad v Bothma* 1997 (3) SA 120 (O)
* *Trustees, Brian Lackey Trust v Annandale* 2004 (3) SA 281 (C)
* *Malherbe v Ceres Municipality* 1951 (4) SA 510 (A)
* *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287 (United Kingdom)
* *Amkco Ltd Co v Welborn* 130 N.M. 155 (United States of America)
* The Encroachment of Buildings Act 1922 No 23 (New South Wales)
* Van der Walt AJ “Replacing property rules with liability rules: Encroaching by building” (2008) 125 *SALJ* 592–628
  1. **Acquisition of ownership [Chapter 7]**

Original forms of acquisition of ownership

* *Macdonald Ltd v Radin NO and the Potchefstroom Dairies and Industries Co* Ltd 1915 AD 454
* *Standard-Vacuum Refining Co of SA (Pty) Ltd v Durban City Council* 1961 (2) SA 669 (A)
* *Theatre Investments (Pty) Ltd v Butcher Brothers Ltd* 1978 (3) SA 682 (A)
* *Melcorp SA v Joint Municipal Pension Fund (Transvaal)* 1980 (2) SA 214 (W)
* *Konstantz Properties (Pty) Ltd v Wm Spilhaus en Kie* 1996 (3) SA 273 (A)
* *Unimark Distributors (Pty) Ltd v Erf 94 Silvertondale (Pty) Ltd* 1999 (2) SA 986 (T)
* Prescription Act 18 of 1943
* Prescription Act 68 of 1969

Derivative forms of acquisition of ownership

**1.7 Protection of ownership [Chapter 8]**

Real remedies

* *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC)
* Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

Delictual remedies

Unjustified enrichment

**MATERIAL**

The prescribed textbook for this course is Mostert H and Pope A (eds.) *The Principles of the Law of Property in South Africa* (2010) Oxford University Press. It is strongly recommended that students have access to this text.

The core reading and study material for this course are the leading judgments on the aspects of the law of property to be studied. These cases may be found in the law reports, which may be available in both paper and electronic form in the law library.

**Other texts that may be consulted are:**

* Badenhorst P, Pienaar JM and Mostert H *Silberberg and Schoeman’s* *The Law of Property* 5th edition (2006);
* Carey Miller DL, Pope A *Land Title in South Africa* (2010);
* Pienaar GJ *Sectional Title and Other Fragmented Property Schemes* (2010);
* Pienaar JM *Land Reform* (2014);
* Van der Walt AJ *Constitutional Property Law* 3rd edition (2012); and
* Van der Walt AJ *The Law of Neighbours* (2010);
* Southwood MD *The Compulsory Acquisition of Rights* (2000).

**STUDENT ASSESSMENT**

Lectures will refer to previous exam questions as practical exercises throughout the lesson plans and further ground will be practically applied in the tutorials. We should ideally be able to take the same question and flesh out additional supporting arguments to answer complex legal scenarios as we engage with further material as the year progresses.

The final mark for the course is comprised of the following components:

**Examination:** out of 70 marks

**Class work:** out of 30 marks

**Total: 100 marks**

**Test**

This course will have one test, which will be written during the second term. It will contribute 50% of the class mark. The questions on the test will be written in a similar style to those on the June exam. The test **is COMPULSORY**.

**Assignment**

This course has one assignment that is due in the second term. It should not be longer than 2500 words and will account for the other half of the class mark.

This assignment is research-related, and students are expected to deal with a problem that is not normally covered by lecturers but is examinable. All assignments must be submitted with a full "Turnitin Report" report attached to the hardcopy document and the Rubric which will be provided.

**Examination**

In June there will be a two-hour paper for 70 marks. Students will be required to explain legal rules and principles in a theoretical sense, write a case note on leading precedents, and apply their knowledge to solve practical problems.

**EVALUATION**

Students will be required to complete evaluation questionnaires according to the Law Faculty’s evaluation cycle. Student responses to these questionnaires assist the Faculty in improving the quality of teaching as well as for curriculum development. An external examiner will assess the quality of the exam paper and student answers and will complete a report on the course. Nonetheless, students are encouraged to discuss difficulties and problems regarding the course with the lecturer – either personally or through a class representative

Best wishes for the academic year 2022!!

Kind Regards,

Ms Ona Xolo.