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# LAW OF PROPERTY AND SECURITY A

## 2009

### 1. INTRODUCTION

#### Overview

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

The purpose of the course is

- To provide the students with an understanding of the purpose, scope and development of the Law of Property.
- To familiarize students with the general principles of ownership and acquisition of real rights.
- To enable students to classify and distinguish real and personal (creditor's) rights.
- To introduce the concepts of expropriation and deprivation of property rights in terms of the Constitution of the Republic of South Africa 1996 and applicable case law.
- To introduce students to the sources of current law of property.
- To assist students in research and problem solving skills and the terminology commonly encountered in the law of property.

#### 1.2 Credit Value

10 Credits. This is calculated on the basis of 100 “notional hours” that a student would spend in lectures, learning for tests/exams over the semester.

#### 1.3 Assumptions of Prior Learning

- The student must be capable of communicating in written and spoken English.
- The student must be able to work/study independently and be capable of working in groups.

- The student must be able to read, analyse and extract principles from law reports, statutes and other sources.
- The student must know how and where to access resources (including electronic) such as textbooks, law reports and statutes in the Law Library.
- The student must be able to identify and apply legal principles to a set of facts.
- The student must have a working knowledge of legal referencing and be able to apply these to their written work.

## 2. OUTCOMES

### Critical Outcomes

Students will be able to:

- (a) identify and solve problems.
- (b) work in a team and individually.
- (c) collect, analyse and evaluate information from the various sources of law, as well as information conveyed in the lecture room.
- (d) Communicate effectively in class debates and written assignments.
- (e) Use technology in legal research.
- (f) Recognize problem-solving contexts involving the law of property.

### Specific Intended Outcomes

- (a) To understand the purpose, scope and development of the Law of Property.
- (b) To understand the principles of ownership and how real rights are acquired.
- (c) To distinguish between real and personal rights and demonstrate an understanding of the legal consequences arising from each.
- (d) To understand and explain the concepts of expropriation and deprivation
- (e) To apply the knowledge acquired during the course to solve practical problems arising from the holders of property rights.
- (f) To understand the extent to which the courts have succeeded in harmonizing the principles of the common law with the constitutional values of equality, equity and justice.

### 3. TEACHING METHODS

The teaching method will include, *inter alia*, the discussion of the law as contained in the main sources, namely textbooks, case law and legislation in *viva voce* lectures. Students will be expected to read chapter headings in advance, as they will be required to participate actively during the lecture

There is no comprehensive handout for the course but the students will be provided with a course outline. Students are expected to take their own notes during class. Supplementary material will also be supplied from time to time.

Students are expected to assume responsibility for their learning by reading ahead before each lecture and consolidating afterwards. Lectures are compulsory and a student may not miss more than **THREE** lectures without a valid Leave of Absence. Each of the topics indicated in the course content will require about three to four lectures. There is a heavy emphasis on the cases which are listed in the *Case book for students*.

### 4. RESOURCES

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 accessed in the Law Library, both in paper and electronic form.

The prescribed textbooks are A J van der Walt and G J Pienaar *Introduction to the Law of Property* (5<sup>th</sup> edition), Juta & Co. 2006 and *Law of Property Casebook for Students* 6<sup>th</sup> edition, Juta.

Badenhorst *et al* Silberberg and Schoeman's *The Law of Property* (5<sup>th</sup> edition) 2006, Carey Miller with Anne Pope *Land Title in South Africa*, Juta,(2000), and AJ van der Walt *Constitutional Property law*, Juta & Co, (2005), five copies of the latter are available in the library.

### 5. STUDENT ASSESSMENT

#### Assessment Strategy

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

Examination:	out of 70 marks
Class work:	out of 30 marks
<b>Total:</b>	<b>100 marks</b>

## **Tests**

Will be out of 35 marks and students will write the test in the designated lecture period of 45 minutes. The test will contain questions equivalent to that which may be found in the June examination. The test is **COMPULSORY** and counts for half the class mark.

## **Assignment**

There is one assignment for this course that is submitted at the beginning of the second term. The assignment should not exceed 1000 words in length and comprises half of the class mark. The assignment is compulsory. No late assignments will be accepted for marking and will receive 0% unless the student has a written valid Leave of Absence.

## **Examination**

In June there will be a two-hour paper that will be out of 70 marks. The class component will count 30 marks. There will be three questions on the paper and the student will have to choose two questions to answer. Each question carries 35 marks and they will require students to be able to explain legal rules and principles in a theoretical sense, to write a case note on leading precedents, as well as apply their knowledge to solving practical problems.

The examination is compulsory and an external examiner assesses the quality of both the examination paper and students' answers.

## **6. EVALUATION**

The course is evaluated on a three year cycle and students evaluate by filling in a questionnaire that requires both quantitative and qualitative responses. The responses are processed by the Academic Development Centre who compiles a report highlighting weaknesses and strengths which is then sent to the lecturer concerned who in turn discusses the content with the Dean and Deputy Dean of the Faculty. The feedback and issues arising from the evaluation as well as the action taken to address them is given by either the Dean or Deputy Dean at the earliest opportunity.

## **7. COURSE OUTLINE**

### **7.1 Purpose of the Law of Property**

#### **7.1.1 Purpose of the law property. What is the Law of Property all about?**

According to A J Van der Walt and G J Pienaar.

Introduction to the law of Property (2006) : 10 the law of property deals with the rights and actions of persons with regard to things and other forms of property as well as other relations between persons and property. “It describes the ways in which property rights can be acquired and exercised lawfully and remedies by which they are protected against infringement, as well as the legal results and implications of other relations between persons and property.”

In dealing with the meaning of property as set out below students will realize that property in the new constitutional order has been constitutionalised and the emphasis in case law is on the balancing of competing interests. The case of *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (cc) is illustrative. This is case No.31 in the *Law of Property Casebook for Students*.

In paragraph 37 Sachs J states: “The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of *ubuntu*, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy ...”The cases emphasize that property rights are not absolute. See section 25(2), (3) and (4) of the Constitution.

#### 7.1.2 Meaning, function and the changing face of the Law of Property.

See pages 6 – 11 below.

#### **7.2) Sources of the current law of property**

See pages 11-13 below.

#### **7.3)The legal concept of property**

See page 13 below.

- (a) Property as rights
- (b) Property as objects of rights
- (c) Concept of a thing

#### **7.4) Classification of property**

- (a) Patrimonial rights and patrimonial objects
- (b) Classification of things

#### **7.5 Rights**

- (a) Real rights and creditor's rights
  - The test for the registrability of rights. See Ntusi Mbodla: "The test for registrability of rights: What is the law after Cape Explosive Works?" (2002) 119 SALJ 277 and CG Van der Merwe "Numerus Clausus and the development of New Real rights in South Africa" (2002) 119 SALJ 802; A Domanski "The recognition of new categories of real rights: Enter the contingency principle" 2004 T.H.RHR 673.
  - Registration of rights other than real rights.

#### **7.6 Acquisition of real rights: General principles**

#### **7.7 Ownership: General principles**

- The concept of ownership
- Co-ownership
- Limitation on ownership
- Original acquisition of ownership
- Protection of ownership
- Termination of ownership

#### **8. Meaning of property**

According to Professor I.M. Rautenbach "*Introduction to the Bill of Rights*" in Bill of Rights Compendium...1A73 "Property", apart from providing that "property" is not limited to land (s 25 (4) (b)), the Bill of Rights does not define property. In his view a choice will eventually have to be made between various alternative meanings "for example, property as a "thing" – ownership, property as patrimonial interests acquired through personal endeavour, or property as comprising all patrimonial interests. See further, Van der Walt A J "Property rights, land rights and environmental rights" in Van Wyk et al (eds) *Rights and Constitutionalism: The New South African legal Order*, Cape Town 1994 at 454-401 and

Chaskalson and Lewis "Property" in Chaskalson et al (eds) *Constitutional Law of South Africa*, Cape Town (1996) par 31.

According to Badenhorst et al *Sieberg and Schoeman's The Law of Property*, 5<sup>th</sup> Ed (2006) at page 1 "this term signifies various distinctly different concepts. In the first place it may signify the right of ownership in a legal object. Secondly, it may also refer to the legal object to which this right relates... Since the introduction of the new constitutional order, and with it the property clause in the Bill of Rights, the term "property" may, thirdly, denote a variety of legal relationships qualifying for protection as such under the Constitution..."Property in the three senses mentioned above, "...implies the existence of rights and duties among individuals mutually, and between specific individuals and the state...". The authors conclude that property in the broad sense may include patrimonial rights and patrimonial objects. They further point out that in order to distinguish law of property from the law of obligations it is necessary to limit the ambit of the law of property to include only the various legal norms that regulate those legal relationships between legal subjects concerning things – hence the emphasis on real rights, things and patrimonial rights serving as the object of limited real rights".

Theunis Roux "Property" in Cheadle et al, *South African Constitutional Law: The Bill of Rights*, Butterworths (2002) at 449 makes the following important comments: "at common law, the expression "property" embraces both the object of real rights (corporeal and incorporeal things) and real rights themselves... In modern South African law, contractual rights to performances (such as shares in a company), apart from the rights of a lessee where the huur gaat voor koop rule applies, are generally not regarded as property rights. As the Diepsloot case shows (*Diepsloot Residents and landowners' association and others v Administrator, Transvaal* 1994 (3) SA 336 (A), however certain subsidiary interests in land are enforceable as property rights, provided their relationship to a valued stick in the property rights bundle can be established... Customary Law interests in land... should be treated as property rights conferred or recognised by statute...

Property rights recognised in legislation are legion, ranging from extensions of common - law ownership rights (sectional title interests) to interests in land recognised as property rights under the new land reform legislation (e.g. the residence right of an occupier in terms of s 6 (1) of the Extension of Security of Tenure Act 62 of 1997) ... As far as interests not previously recognised as property are concerned, there is a wealth of foreign law to suggest

that certain personal rights to performances should enjoy constitutional protection under the property clause. Thus shares or other personal interests in a business, goodwill and right of management of a company, have all been recognised as Constitutional property in foreign law..."

See also A J van der Walt *An overview of developments in Constitutional property law since the introduction of the property clause in 1993* in (2004) 19 SAPR/PR 46 - 82. On the meaning of property see also Ian Currie and Johan de Waal *The Bill of Rights Handbook*, 5 ed Juta (2005) Chapter 25.

See the following cases dealing with the meaning of property:

*Geyser v Msunduzi Municipality* 2003 (3) BCLR 235 (N) at 249;

*Transkei Public Servants Association v Government of RSA* 1995 (9) BCLR 1235 (TK) at 1246 – 1247). This case implicitly accepted the expanded notion of property introduced by Charles A Reich in 1964 Yale Law Journal Vol 73 p 733 which raises a number of concerns which are now receiving serious consideration in recent publication

## **8.2 Persons and institutions bound by the right to property**

No one may be deprived of property: See the meaning given to the word “deprive” in *First National Bank* 2002 (4) SA 768 (cc). See also the distinction drawn by the court between deprivation and expropriation. See Van der Walt on the notion of constructive expropriation 2002 THRHR 459 and Mostert in 2003 SAJHR 567. *Steinberg v South Peninsula Municipality* 2001 4 SA 1231 (SCA). See also Currie and de Waal (2005): 541 on the relationship between deprivation and expropriation.

See section 25 (1) and section 36(1). The following cases are important on the interpretation of arbitrariness in section 25(1). *First National Bank case, supra* and the *National Director Public Prosecutions v RO Cook Properties* 2004 8 BCLR 848 (CC), *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (2) BCLR 150 (CC). See again Comments by Currie and de Waal on Arbitrariness, procedural fairness and substantive fairness at 542-550.

## **8.3 Purpose of the property clause (section 25(1))-(2). The structure of analysis**

## **8.4 Expropriation**

Compensation and calculating thereof : *City of Cape Town v Heldeberg Park Development (Pty) Ltd* 2007 (1) SAI (SCA).

## **8.5 Seizures of property and sales in execution**

See the following cases:

*Lesapo v North West Agricultural Bank* 1999 (12) BCLR 1420 (cc); *Zondi v MEC for Traditional and Local Government* 2005 4 BCLR 347 (CC) and *Prophet v National Director of Public Prosecutions* 2006 1 SA 38 (SCA). In *National Director of Prosecutions v Gerber and Another* 2007 1 SA 512 (W) the court held that there must be sufficient reason for deprivation of property in terms of Chapter 6 of the Prevention of Organized Crime Act 121 of 1998.

## **8.6 Law of Property and the law of things**

In the past this branch of the law was known as the law of things. Now there has been a shift from things to property. The latter is said to refer to a wide variety of assets that make up a person's estate or belongings and which serve as objects of the rights that such a person exercises in respect thereof. The former is said to denote the object of a right in the restricted meaning of referring only to corporeal or material objects- the law relating to these concepts should have a corresponding meaning.

### **8.6.1 Social function and substance of the law of property**

The law of property seeks to ensure that the right of ownership is not used in a manner that is injurious to other members of society, for example, restrictions placed on the owner's ability to erect buildings on his or her land in public interest e.g. Town Planning and Township Ordinances; anti-pollution regulations, factory regulations, sanitary regulations etc.

- Limitations may be imposed by private law in the interests of neighbours e.g. the law relating to nuisance. Roux in the article referred to earlier discusses a number of foreign cases where the courts considered individual court challenges against state limitations on the use of private property where the claimants perceived the limitations as amounting to uncompensated expropriations. See pages 452 and 457.

## 8.6.2 Changing face of the law of property

### 8.6.2.1 Emergence of a new property law framework

See in this regard the following recent publications: D L Carey Miller "A New Property," (1999) 116 SALJ 749 at 751 and Theunis Roux "Continuity AND Change in a Transforming Legal Order: The impact of section 26(3) of the Constitution on South African law" (2004) 121 SALJ 466 and Karrisha Pillay "Property v Housing Rights: Balancing the interests in eviction cases" (2004) 5 E S R Review p16. The latter is a comment on Port Elizabeth Municipality v Various Occupiers CCT 53/03, a Judgment handed down on 1 October 2004. Carey Miller (1999) at 751 is of the view that changes to established property law and instances of new exceptions to its principles occur in the context of the reform legislation. The author refers to the new property concepts of "initial ownership" and "beneficial occupation" referred to in the Development Facilitation Act 67 of 1995. The Bill of Rights introduced the notion of access to property as a fundamental human right.

Section 26 of the new Constitution is important in this regard. It guarantees everyone the right to have access to adequate housing.

Sec 26(3) prohibits the eviction of a person from their home or has their home demolished without an order of court made after considering all the relevant circumstances.

This section impacts negatively on the common law right of the owner to evict someone from his property (e.g. a lessee in the case of holding over). There are certain procedural safeguards, which have been introduced by PIE.

Badenhorst *et al* at page 8 think that recent decisions of the Supreme Court of appeal in *Ndlovu v Ngcobo*; *Bekker v Jika* [2002] 4 ALL SA 384 (SCA) and *Brisley v Drotsky* 2002 (4) SA 1 (SCA) may result in the creation of new rights in property in the broad sense. It is doubtful whether the *Brisley* case had this effect. The latter concerned with the holding over after the termination of a

lease. *Ndlovu* case was another instance of holding over after termination of a lease. The Bekker component of the case concerned the person who had defaulted in his mortgage bond and refused to vacate the premises to allow the new owner to take occupation. The provisions of PIE were invoked in defence of the continued occupation.

The problem seems to centre around the procedural requirements to be observed in the enforcement of the rights of ownership. A good example of this kind of case is provided in *Modderklip Boedery (Pty) Ltd v Modder East Squatters and Another* 2001 (4) SA 385 (w) where the police refused to assist the owner in removing thousands of land invaders from his farm. The owner in the *Modderklip* case alleged that the squatters had infringed several of his constitutional rights protected in Chapter 2 of the new Constitution. One of these rights was section 25 (1) right, namely a guarantee against arbitrary deprivation of property except in terms of a law of general application. See also the *First National Bank of SA Ltd t/a Wesbank v Commissioner of the South African Revenue Services* 2002 (7) BCLR 702 (cc) par 50. In the above case the Constitutional Court held that any interference with the use, enjoyment or exploitation of private property is a deprivation of that property in the constitutional sense (para 57). The court said that deprivation is a wide concept, encompassing expropriations. All expropriations are deprivations but not all deprivations will have the effect of expropriating property..." See also the comments made by Roux (2002) at 452 on the distinction between deprivation and expropriation in the context of the cases discussed therein. Although the Constitutional Court in the FNB case cautioned against any wide definition of property, Roux feels that the more widely the courts define constitutional property, the more carefully tailored the definition of expropriation has to be. See his reference to the Zimbabwe case of *Hewlett v Minister of Finance and Another* 1982 (1) SA 490 (25). See also useful comment on the FNB case by Anton Kok 2004 T.H.R.H.R 683.

On the interpretation, application and limitation of property rights see generally AJ van der Walt *Constitutional Property Law* pp 18 – 56.

## 9. Sources of the current law of property

### 9.1 Common law

Common law as a source of the law of property refers to the principles of Roman-Dutch law that have been retained. These principles come from three distinct sources:

- (a) Roman law (distinction between ownership and possession, ownership and limited real rights, the notion of dominium etc.)
- (b) Germanic customary law as modified in the 16<sup>th</sup> and 17<sup>th</sup> centuries (distinction between movables and immovables, the system of land registration and the development of the institution of notarial bonds etc.)
- (c) *English law* (99 year leasehold, the recognition of attornment as a mode of delivery of movables). The common law principles, however, have to be harmonized with the objects of s 39(2) of the Bill of Rights see *Kusa Kusa CC v Mbele* 2003 (2) BCLR 222 (LCC) where Gildehys AJ made the following remarks: "under the common law, an owner of land is entitled to apply to court for an eviction order by simply alleging his ownership of the land and stating that someone else in occupation of the land [*Graham v Ridley* 1931 TPD 476; *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20A].

The Constitution and post-apartheid land reform legislation placed restrictions on the common law right of eviction, and in some cases overrode the common law ..." par 4. See also the cases referred to at page 7 of the Handout.

### 9.2 Legislation

The following statutes are important:

- (a) Expropriation Act 63 of 1975 and its application in *City of Cape Town v Helderberg Park Development (Pty) Ltd* 2007 (1) SA 1 (SCA);
- (b) The Deeds of Registries Act 47 of 1937;
- (c) Extension of Security of Tenure Act 62 of 1997 (ESTA);
- (d) The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) and

(e) Land Reform (Labour Tenants) Act 3 of 1996.

In *Ndlovu v Ngcobo* 2003 (1) SA 113 (SCA) Harms JA said that PIE gives 'unlawful occupiers' some procedural and substantive protection against eviction from the land.

One most important feature of the post-apartheid legislation dealing with the law of property is the introduction of the notion of justice and equity. See comments in this regard in *ABSA Bank v Murray and Another* 2004 (1) BCLR 10(C).

### 9.3 Case law

There is a growing body of case law affecting the law of property. See, in addition to the cases already referred to, the following: *Modeler East Squatters Greater Benoni City Council and others v Modderklip Boedery (Pty) Ltd* case no. 187/03 and 213/03 judgment handed down by the Supreme Court of Appeal on 27 May 2004; *Transkei Public Servants Association v Government of the Republic of South Africa* 1995 (-) BCLR 1235 (TK). Other cases are noted in the casebook. The judgment of the Constitutional Court in *President of the Republic of South Africa and Another v Modderklip Boedery (Pty) Ltd* 2005 (5) SA 3 (CC) is noted at page 403 of the Casebook.

### 9.4 Constitution

The post-apartheid legislation relating to property is rooted in ss 25 and 26 of the Constitution. The Constitution of the Republic of South Africa 1996 has had a huge impact on the law of property. The emphasis is on the promotion of the "spirit, purport and the objects of the Bill of Rights" (s 39(2) of the final Constitution.)

## Assignment

Write a note on *City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2007(1) SA 78 (W). You should compare the approach of the court in the above case with that of the Transvaal Provincial Division in *Cashbuild (South Africa) (Pty) Ltd v Scott and Others* 2007 (1) SA 332 (T).

[35]

Length : Not more than 1000 words

Due Date : To be announced in class

## 10. ***The legal concept of property***

### 10.1 **Property as rights**

“Property then encompasses at least the real rights recognised by the law of property, rights such as ownership, mortgage, lease, servitude, mineral rights, liens. It also encompasses at least some of the component rights, making up what is termed the ‘bundle of rights that constitutes plenary ownership’... Iain Currie & Johan de Waal, *The Bill of Rights Handbook*, Fifth Edition (2005) at p 538.

See also the various kinds of rights noted by AJ van der Walt and GJ Pienaar *Introduction to the law of Property*, Fourth Edition, Juta (2002) p 15. See also the following sources: Silberberg and Schoeman’s *The Law of Property*, Fourth Edition edited by Badenhorst, Pienaar and Mostert p 19, Van der Merwe vol 27 LAWSA.

**10.2 Definition of a right and the bearers of rights.** See the *FNB* case.

**10.3 Property as objects of rights:** Badenhorst *et al* p 21.

## 11. **Things: Van de Walt and Pienaar p 14 – 16.**

### 11.1 **Characteristics of a thing**

- Corporeality
- External to humans
- Independence
- Subject to juridical control
- Useful and valuable to humans

**11.2 Classification of things:** See generally Badenhorst *et al* and Van de Walt and Pienaar.

**11.3 Registrability of Rights,** Ex Parte Geldenhuys 1926 OPD 155 and the other cases noted in the prescribed textbooks. See also Van de Walt Casebook for Students of law of Property. Students are required to study the provisions of s 63 (1) of Deeds Registries Act 47 of 1937 and exceptions referred to in s 63 (2). See also Van der Merwe Volume 27 LAWSA paragraph 45. The following cases should be studied and compared: *Lorentz v Melle & others* 1978 (3) SA 1044 (T), *Pearly Beach Trust v Registrar of Deeds* 1990 (4) SA 614 (C), *Cape Explosives Works Ltd and Another v Denel (Pty) Ltd and others* 2001 (3) SA 569 (SCA), *Fine Work Products of South*

*Africa Ltd v Director of Valuations* 1950 (4) SA 490 (D) and *Kain v Khan* 1986 (4) SA 251 (C).

**11.4 Registration of Personal Rights** see Silberberg and Schoeman's *The Law of Property*, 4 ed p 68-73.

### **11.5 Acquisition of real rights: General Principles**

- Principle of *numerus clausus*
- Absolute character of real rights. See the legal effect of legislation such as P/E and ESTA on *rei vindicatio*
- Publicity principle and the doctrine of notice. See the case of *Fre's (Pty) Ltd v Ries* 1957 (3) SA 575 (A).
- Specificity principle. See also the case of *Kain v Khan* 1986 (4) SA 251 (C).
- Transmissibility
- Abstract principle. See Silberberg and Schoeman's *The Law of Property* 4 ed on distinction between abstract and causal theories of transfer p 82

### **11.6 Modes of acquisition: original and derivative methods**

- Essential elements in the transfer of real rights
- The doctrine of notice and its application Silberberg and Schoeman's *The Law of Property* p 87-92, a recent case on the application of the doctrine of notice on double sale is that of *De Villiers v Potgieter and Others NNO* 2007 (2) SA 311 (SCA).

## **12. Concept of Ownership**

- See chapter 6 of Silberberg and Schoeman's *The Law of Property*.
- Limitation of ownership. This refers to public law and private law limitations. The leading cases in this area are noted in Silberberg & Schoeman's *The Law of Property*. See also the case of *Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd* 2007 (2) SA 363 (SCA) (on the right of owner of land to lateral and surface support – mining activities).
- Recent cases on abatement of nuisance include: *Laskey and Another v Showzone CC and Others* 2007 (2) SA 48 (C) and *Allaclas Investments (Pty) Ltd and Another v Milnerton Golf Club* 2007 (2) SA 40 (C)

### **12.1 Co-Ownership**

See generally chapter 7 of Silberberg and Schoeman's *The Law of Property and Van der Walt & Pienaar* (2005).

### **12.2 Original Acquisition of Ownership**

See generally Chapter 8 of Silberberg and Schoeman's *The Law of Property*. See *South African National Parks v Weyer Henderson and Others* 2007 3 SA 109 (SE) on acquisitive prescription.

### **12.3 Derivative Acquisition**

See Chapter 11 of Silberberg & Schoeman's *The Law of Property*.

## **13. Protection and loss of Ownership**

Legal remedies

## Law of Property and Security A – 2009

### Lectures No 1, 2 and 3

- 1.1 Purpose of the Law of Property
- 1.2 Meaning of property : Common Law
  - 1.2.1 Property within the property clause
  - 1.2.2 Purpose of the property clause:

See generally the following cases:

*Harksen v Lane NO and Others* 1998 (1) SA 300 (CC) dealing with the position under the interim constitution; *First National Bank of SA Ltd t/a Wesbank v Commissioner for the South African Revenue Services and Others* 2002 (4) SA 768 (CC); *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (2) BCLR 150 (CC). These cases gave an expanded meaning of property. See also Kevin Hopkins and Kate Hofmeyer 2003 SALJ 48. The *FNB* case is noted as Case No 6 in *The Law of Property Casebook for Students*.

- 1.2.3 Deprivation of property: see in particular *Mkontwana* case.
- 1.2.4 The relationship between deprivation and expropriation: *Haksen* and the *FNB* cases.
  - 1.2.4.1 law of general application
  - 1.2.4.2 arbitrariness
- 1.3 Expropriation
  - 1.3.1 Constructive expropriation: *Steinberg v South Peninsula Municipality* 2001 (4) SA 1231 SCA.
  - 1.3.2 Seizures of property and sales in execution.
  - 1.3.3 Limitation of Property rights : s36 of the Constitution.
    - 1.5.4.1 Limitation in terms of land reform statute such as ESTA : *Nhlabati v Fick* 2003 (7) BCLR 806 (LCC) and *Nkou v Buhoman* 2002 1 SA 372 (SCA).

### **Lectures No 4 and 5**

Emergence of the new property framework. See generally the sources referred to at page 9-11 and the sources of the current law of property.

### **Lecture No 6**

**Property as rights** : See pages 13-15