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LAW OF PROPERTY AND SECURITY A

2011

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. **[DPs will be enforced strictly because attendance and discussions in class are an important part of the course]**

4. COURSE CONTENT

- 4.1 Introduction: Outline of the law of property**
(Meaning, function and sources of the Law of Property)
- 4.2 The legal concept of property**
(Characteristics of things; Relationship between things, rights and property; Classification of things)
- 4.3 Rights**
(Categories of rights; Real rights and personal rights)
- 4.4 Possession**
(Meaning, elements and protection of possession)
- 4.5 Ownership: General principles**
(The concept of ownership; Forms of ownership; alternative forms of title)
- 4.6 Ownership: Limitations**
(Constitutional; private law limitations; Public law limitations)
- 4.7 Ownership: Acquisition**
(Original and derivative acquisitions)
- 4.8 Ownership: Protection**
(Remedies)

5. 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 textbook for this course is **The Principles of the Law of Property in South Africa**, Hanri Mostert & Anne Pope eds., (Oxford University Press, 2010). [Students are strongly encouraged to have access to this text].

Other texts that may be consulted are:

1. A J van der Walt and G J Pienaar *Introduction to the Law of Property* (5th edition), (Juta & Co. 2009) and *Law of Property Casebook for Students* 6th edition, (Juta, 2009)
2. Badenhorst *et al* Silberberg and Schoeman's *The Law of Property* (5th edition) 2006,
3. Carey Miller with Anne Pope *Land Title in South Africa*, Juta,(2000),
4. A J van der Walt *Constitutional Property law*, Juta & Co, (2005).

6. STUDENT ASSESSMENT

Specific Outcomes	Assessment criteria	Assessment tasks
On the completion of the course the students should be able to: Understand and explain the meaning of property in the Constitutional sense, the difference between private law notions of property and constitutional property. Understand and explain the concept of new property.	What evidence must the student provide to show that they are competent? The student must be able to: -Describe the private law notion of property (the notion of a bundle of rights) and the constitutional property. -Describe the meaning of property in the property clause of the New Constitution. -Describe how the notion of the bundle of rights has been affected by legislation.	Write an essay, supported by authority. (See the FNB decision) explaining the approach of the Constitutional Court on the meaning of property.
Understand the sources	Discuss the effect of PIE	Write an essay,

of the law of property and the effect of recent legislation and the new Constitution on the Common law sources.	on the Common Law remedy of <i>Rei Vindicatio</i> .	supported by authority, showing the impact of recent court decision on the common law principles.
Understand the concept of property and the concept of a thing.	Distinguish between real and personal rights.	Write an essay, supported by authority, explaining the tests for the registrability of rights.
Understand the notion of registrability of rights	Write a note on the legal significance of classification of property in our law.	Write an essay, supported by authority, explaining the legal significance of classification of property.
	Explain which rights are registrable.	Write an essay on the legal requirements for the registrability of rights.
Understand and explain limitation of ownership.	Demonstrate an understanding of the court decisions that have authoritatively dealt with the various categories of limitations of rights.	Write an essay supported by authority on how the courts have applied the notion of neighbor law in determining the limitation of ownership.
Apply the knowledge acquired in this course to solve practical legal problems arising in the property context.	Identify the relevant legal problem or issue. State the relevant legal precedent with regard to that issue.	Write a case note in which a practical problem is analysed.

7. Assessment Strategy

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

Examination: out of 70 marks
Class work: out of 30 marks
Total: 100 marks

Tests

There is one test designated for this course that will be written towards the end of April. It will be a one hour test and will contribute to 50% of the class

mark. The test will contain questions set in a similar style to those that will be found in the June examination. The test is **COMPULSORY**.

Assignment

There is one assignment for this course. The assignment question will be made available at the beginning of the semester and must be submitted on or before 18 March 2011. The assignment should not exceed 1000 words in length and will comprise the other half of the class mark. This assignment is research related and students are expected to deal with a problem that will ordinarily not be covered by lecturers, but which will be examinable. No late assignments will be accepted for marking.

Examination

In June there will be 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.

8. 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