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LAW OF PROPERTY AND SECURITY B

2012

1. INTRODUCTION

1.1 Overview

Law of Property and Security B is a semester course which builds upon the Law of Property and Security A and introduces students to other aspects of property law, especially the law relating to security and some of the most important South African property law statutes.

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 main assumption is that learners in this course have completed the Law of Property A module taught in the first semester of the year and are therefore conversant with the important principles of South African property law. Other assumptions are that

- 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

a. 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.

b. Specific Intended Outcomes

- (a) To understand the principles of ownership and especially how rights of ownership are protected
- (b) To understand the scope of specific forms of rights in property, such as servitudes and other restrictive conditions.
- (c) To understand and explain the nature, content, acquisition, transfer and termination of mineral rights
- (d) To understand the principles and legislative regimes governing access to water resources and their constitutional imperatives
- (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 may 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 Protection of ownership

[Real remedies; delictual remedies; unjustified enrichment]

4.2 Real Security

(Personal & Real; Categories; Express real security rights; tacit real security rights; judicial real security rights]

4.3 Servitudes and Restrictive Conditions

(Meaning; creation, termination and enforcement of servitudes; nature, enforcement and removal of restrictive conditions]

4.4 Minerals

(History, Mineral and Petroleum Resources Development Act 28 of 2002, ownership, rights, social and environmental responsibility]

4.5 Water

(Water Act 54 of 1956; Water Services Act 108 of 1997; National Water Act 36 of 1998; emerging issues]

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 & Co, 2000),

4. A J van der Walt *Constitutional Property law*, (Juta & Co, 2005).
5. C Dale *et al*, *South African Mineral & Petroleum Law* , (Lexis-Nexis Butterworths, 2005)
6. *Willies Principles of South African Law* 9th ed (Juta & Co 2007)

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 definition characteristics, creation and extinction of servitudes	What evidence must the student provide to show that they are competent? The student must be able to: Describe the main types of servitudes and their main features	Write an essay, supported by authority illustrating how servitudes are terminated.
Understand and explain nature and the enforcement of restrictive conditions in our law	Describe the legal nature and the interpretation of restrictive conditions	Write an essay, supported by authority, showing the removal or modification of restrictive conditions.
Understand and explain the nature and enforcement of Constitutional property right	Distinguish between conjunctive & disjunctive interpretation of the definition of labour tenant	Write an essay show the recent decisions interpret the provisions of section 1 of the Land Reform.
Understand and explain personal and the various kinds of real security rights	Describe the nature and the content of the contract of suretyship. Distinguish between a mortgage and pledge. To what extent are these contracts affected by the National Credit Act 38 of 2005	Write an essay supported by authority showing the effect of non compliance with the provisions of section 6 of the General Law Amendment Act on the validity of a contract of suretyship

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 in the last term (fourth term) on a date to be announced. 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 November 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 26 August 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 November 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