

LAW OF PROPERTY B

INTRODUCTION

The Law of Property B 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 “possession”; the elements of possession; how possession is protected in terms of legal remedies; and how possession is terminated;
- ❖ An introduction to the meaning of a “servitude”; the ability to distinguish between the different manifestations of “praedial” servitudes and “personal” servitudes; how servitudes are created and terminated; and how servitudes are enforced and
- ❖ An introduction to the meaning of “real security”; the ability to distinguish between “real” and “personal” security; the ability to apply the specific rules of real security rights that are created by agreement, by operation of law, and by court order.

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: ona.xolo@ru.ac.za

(Please schedule all consultations via email)

Assumptions of prior learning

The student must:

- ❖ be capable of communicating in written and spoken English;
- ❖ be able to work/study independently and be capable of working in groups;
- ❖ be able to read, analyse and extract principles from books, case law, statutes and other sources;
- ❖ know how and where to access resources (including electronic) such as textbooks, case law and statutes in the law library;
- ❖ be able to identify and apply legal principles to a set of facts; and
- ❖ have a working knowledge of legal referencing and be able to apply these to their written work.

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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. There is no comprehensive course guide for the course, but the students will be provided with a course outline. Students are expected to take their own notes. Students are expected to assume responsibility for their learning by reading ahead before each lecture and consolidating afterwards

Thursday	Friday
Property B (12.20 – 1.05) EDEN GROVE RED	Property B (7.45 – 8.30) EDEN GROVE RED
Tutorials Property B (4.05-4.50) EDEN GROVE BLUE	

Property B is designed to encourage the use of legal principles in the resolution of complex property law problems. With the foundation of property law established in the first semester, our **main focus for the second semester will be intensive case law analysis**. You must 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. Servitudes

- Definition of a servitude
- Classification of a servitudes

1.1. Praedial servitudes

Nach Investments (Pty) Ltd v Yaldai Investments (Pty) Ltd 1987 (2) SA 820 (A)
Fourie v Marandellas Town Council 1972 (2) SA 699 (R)

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South African National Parks v Weyer-Henderson 2007 (3) SA 109 (SE)
Linvestment CC v Hammersley 2008 (3) SA 283 (SCA)

1.2. Way of necessity

Sanders NO v Edwards NO 2003 (5) SA 8 (C)
English v CJM Harmse Investments CC 2007 (3) SA 415 (N)
Naudé v Ecoman Investments 1994 (2) SA 95 (T)

1.3. Personal servitudes

Cowley v Hahn 1987 (1) SA 440 (E)
Kidson v Jimspeed Enterprises CC 2009 (5) SA 246 (GNP)
Van der Walt AJ “Development of the common law of servitude” (2013) 130 SALJ 722

1.4. Creation, termination and enforcement of servitudes

Erlax Properties v Registrar of Deeds 1992 (1) SA 879 (A)
Ex Parte Uvongo Borough Council 1966 (1) SA 788 (N)
Eichelgreun v Two Nine Eight South Ridge Road (Pty) Ltd 1976 (2) SA 678 (D)
Glaffer Investments (Pty) Ltd v Minister of Water Affairs and Forestry 2000 (4) SA 822 (T)
Eskom Holdings Soc Ltd v Norton [2014] ZASCA 94 (26 June 2014)
Pickard v Stein 2015 (1) SA 439 (GJ)
Werner v Florauna Kwekery BK [2015] ZASCA 46 (26 March 2015)
Sections 6 and 7 of the Prescription Act 68 of 1969
Sections 75 and 76 of the Deeds Registries Act 47 of 1937
Section 25 of the Sectional Titles Act 95 of 1986
Pienaar GJ *Sectional Titles and Other Fragmented Property Schemes* (Juta & Co., 2010) 261–270

2. Real security

- Distinction between personal and real security
- The meaning of real security
- Express real security rights created by agreement:
 - Mortgage
 - Pledge

Chief Lesapo v North West Agricultural Bank 2000 (1) SA 409 (CC)
First National Bank of South Africa v Land and Agricultural Bank of Southern Africa Ltd 2000 (3) SA 626 (CC)
Findevco (Pty) Ltd v Faceformat SA (Pty) Ltd 2001 (1) SA 251 (E)
Bock v Duburoro Investments (Pty) Ltd 2004 (2) SA 242 (SCA)

2.1. Notarial bonds

Security by Means of Movable Property Act 57 of 1993
Senwes Ltd v Muller 2002 (4) SA 134 (T)
Ikea Trading und Design AG v BOE Bank Ltd 2005 (2) SA 7 (SCA)
Janse van Rensburg v Mahu Exhaust CC 2014 (3) SA 431 (NCK)

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Bokomo v Standard Bank van SA Bpk 1996 (4) SA 450 (K)

- Tacit real security rights created by operation of law
 - Right of retention
 - Debtor-Creditor Lien

Louw h/a Intensive Air v Aviation Maintenance & Technical Services (Edms) Bpk en 'n Ander 1996 (1) SA 602 (T)

Section 155 and Schedule 3 of the Civil Aviation Act 13 of 2009

- Enrichment Liens

- Judicial real security rights created by court order

Jaftha v Schoeman; Van Rooyen v Stolz 2005 (2) SA 140 (CC)

Gundwana v Steko Development 2011 (3) SA 608 (CC)

3. Possession

- The meaning of possession
- The elements of possession

De Beer v Zimbali Estate Management Association (Pty) Ltd 2007 (3) SA 254 (N)

- The protection of possession
 - Spoliation remedy

Zinman v Miller 1956 (3) SA 8 (T)

Administrator; Cape v Ntshwaqela 1990 (1) SA 705 (A)

Yeko v Qana 1973 (4) SA 735 (A)

Du Randt v Du Randt 1995 (1) SA 401 (O)

Mtetwa v Sekaledi [2013] ZAGPPHC 299 (17 October 2013)

Elias Dunias t/a Colosseum Internet Lounge v Minister of Safety and Security [2013] ZAKZNPHC 55 (17 October 2013)

Naidoo v Moodley 1982 (4) SA 82 (T)

Bon Quelle (Edms) Bpk v Munisipaliteit van Otavi 1989 (1) SA 508 (A)

Zulu v Minister of Works, KwaZulu 1992 (1) SA 181 (N)

Plaatjie v Olivier NO 1993 (2) SA 156 (O)

Le Riche v PSP Properties CC 2005 (3) SA 189 (C)

Xsinet (Pty) Ltd v Telkom SA Ltd 2002 (3) SA 629 (C)

Telkom SA Ltd v Xsinet (Pty) Ltd 2003 (5) SA 309 (SCA)

Fredericks v Stellenbosch Divisional Council 1977 (3) SA 113 (C)

Rikhotso v Northcliff Ceramics (Pty) Ltd 1997 (1) SA 526 (W)

Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality 2007 (6) SA 511 (SCA)

Shubart Park Residents' Association v City of Tshwane Metropolitan Municipality 2013 (1) SA 323 (CC)

Van der Walt AJ "Developing the law on unlawful squatting and spoliation" (2008) 125 SALJ 24–36

- Possessory action
- Interdict

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Setlolego v Setlolego 1914 AD 221

Ndauti v Kgami 1948 (3) SA 27 (W)

Victoria and Alfred Waterfront v Police Commissioner of the Western Cape 2004 (5) BCLR 53 (C)

PruneYard Shopping Center v Robins 447 US 74 (1980)

Hurley v Irish-American Gay, Lesbian and Bisexual Group of Boston 515 US 557 (1995)

Van der Walt AJ Constitutional Property Law 3rd edition (Juta & Co,: 2011) 299–301

Singer JW “Property and equality: Public accommodations and the constitution in South Africa and the United States” (1997) 12 SAPL 53–86

- Delictual action
- The termination of possession

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.

*(There is an updated version of this text available at the law library)

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);
- Van der Walt AJ *Constitutional Property Law* 3rd edition (2012); and

STUDENT ASSESSMENT

- ✓ Explain the meaning of “**possession**”; describe the **elements of possession**; identify the most appropriate remedy for the **protection of possession** and apply the specific **requirements** of that remedy; and recognise when possession has been terminated
- ✓ You must be able to: describe the meaning of possession, explain the **elements of possession**, evaluate which one of the possessory remedies are appropriate given a specific factual scenario
- ✓ Differentiate between the **possessory remedies** to find the most applicable one for the facts of a problem question, apply the requirements of that remedy

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to the problem and make a recommendation about either the protection or loss of possession

- ✓ Explain the meaning of a “**servitude**”; distinguish between “**praedial**” and “**personal**” servitudes; describe how servitudes are created and recognise when a servitude has been terminated; choose an appropriate legal remedy to enforce the existence of a servitude
- ✓ Identify the correct form of servitude, apply the requirements of that servitude to the facts of a problem question, choose the most appropriate legal remedy to enforce the servitude
- ✓ Explain the meaning of “**real security**”; distinguish between “**real**” and “**personal**” security; apply the specific rules of a particular real security right to a problem question
- ✓ You must be able to: **distinguish between “real” and “personal” security**, define real security, apply the specific rules of a particular real security right to a problem question
- ✓ Identify the correct form of real security right, **apply the requirements** of that real security right to the facts of a problem question, choose the most appropriate legal remedy to enforce the real security right

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

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

This course will have one test, which will be written during the third term. The questions on the test will be written in a similar style to those on the November exam. The test is **COMPULSORY**.

Examination

In November 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.

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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.