

# **LAW OF PROPERTY A 2015**

## **1. INTRODUCTION**

### **1.1 Overview**

The Law of Property 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 students with:

- 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.

### **1.2 Credit Value**

10 Credits. This is calculated on the basis of 100 “notional hours” that a student would spend in lectures, working on an assignment, and 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;
- 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.

## 2. OUTCOMES

### Critical Outcomes

Students will be able to:

- identify and solve problems;
- work in a team and individually;
- collect, analyse and evaluate information from the various sources of law, as well as information conveyed in the lecture room;
- communicate effectively in class debates and written assignments;
- use technology in legal research; and
- recognise problem-solving contexts involving the law of property.

### Specific Intended Outcomes

The students must be able to:

- explain the meaning of “property”; describe the function and place of property law in South Africa; and state the scope and sources of South African property law
- define a “thing”; discuss the characteristics of a “thing”; and employ the ways of classifying “things” to examples that are provided;
- use the classic theory, the personalist theory and the practical approach of the courts to distinguish between real and personal rights;
- apply the general principles of ownership and alternative forms of ownership to advise an owner about the rights and duties that flow from ownership;
- analyse a set of facts with the aim of testing whether the requirements for the constitutional or private law limitations of ownership have been achieved;
- distinguish between the original and derivative forms of acquiring property in South African property law, and apply the general principles of these forms to factual scenarios; and
- identify which remedies might be applicable, formulate an opinion about the most appropriate remedy, and evaluate whether the remedy provides the owner with the an optimal resolution of the problem.

## 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 chapters in advance, as they will be required to participate actively during 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 during class. 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 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.

### 4.2 The legal concepts of property

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)

### 4.3 Rights

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

### 4.4 General principles of ownership

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

Forms of ownership

Alternative forms of title

### 4.5 Limitation of ownership

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)
- 🔗 *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)

#### 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

## 4.6 Acquisition of ownership

### 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

#### 4.7 Protection of ownership

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 van 1998

Delictual remedies

Unjustified enrichment

### 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 Mostert H and Pope A (eds.) *The Principles of the Law of Property in South Africa* (2010) Oxford University Press. Students are strongly encouraged to have access to this text.

Other texts that may be consulted are:

- Badenhorst P, Pienaar JM and Mostert H *Silberberg and Schoeman's The Law of Property* 5<sup>th</sup> edition (2006);
- Pienaar GJ *Sectional Title and Other Fragmented Property Schemes* (2010);
- Van der Walt AJ *Constitutional Property Law* 3<sup>rd</sup> edition (2012); and
- Van der Walt AJ *The Law of Neighbours* (2010).

### 6. STUDENT ASSESSMENT

Specific outcome	Assessment criteria	Assessment task
Explain the meaning of "property"; describe the function and place of property law in South Africa; and state the scope and sources of South African property law	The student must be able to: explain the meaning of "property" as a technical term; explain the relationship between people and objects; explain the origin of property law	Write an essay on the meaning and importance of property in South African law
Define a "thing"; discuss the characteristics of a "thing"; and employ the ways of classifying "things" to examples that are provided	The student must be able to: define a "thing" in terms of its characteristics; classify "things"	Write an essay on the definition of a thing in terms of its characteristics  Correctly classify a thing according to its negotiability or nature
Use the classic theory, the	The student must be able to:	Write an essay on why the

personalist theory and the practical approach of the courts to distinguish between real and personal rights	distinguish between real and personal rights	distinction between real and personal rights is important, when this distinction is hard to draw, and how the courts have approached this distinction in practice
Apply the general principles of ownership and alternative forms of ownership to advise an owner about the rights and duties that flow from ownership	The student must be able to: define ownership, explain the content and entitlements of ownership, identify the limits of ownership; distinguish individual and co-ownership from alternative forms of ownership	Write an essay on the definition, content and entitlements of ownership
Analyse a set of facts with the aim of testing whether the requirements for the constitutional or private law limitations of ownership have been achieved	The student must be able to: distinguish between deprivations and expropriations; the general rules of neighbour law pertaining to lateral support	Identify the correct limitation for a factual problem and apply the requirements of that limitation to the facts
Distinguish between the original and derivative forms of acquiring property in South African property law, and apply the general principles of these forms to factual scenarios	The student must be able to: distinguish between the various forms of original acquisition of property; distinguish between the various forms of derivative acquisition of property	Identify the correct form of acquiring property for a factual problem and apply the requirements of that remedy to the facts
Identify which remedies might be applicable, formulate an opinion about the most appropriate remedy, and evaluate whether the remedy provides the owner with the an optimal resolution of the problem	The student must be able to: distinguish between real remedies, delictual remedies and a claim for unjustified enrichment	Identify the appropriate remedy for factual problem and apply the requirements of that remedy to the facts

## 7. 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><u>100 marks</u></b>

### Test

There is one test designated for this course that will be written during the first term. It will contribute 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 which will be due in the second term. It should not exceed 2500 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.

### Examination

In June there will be two-hour paper that will be out of 70 marks. The questions 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.

## 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.