



LAW OF PROPERTY B

2019

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 “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.

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

2.1. Critical outcomes

You must 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

2.2. Specific intended outcomes

You must be able to:

- 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
- 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
- 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

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. Servitudes

Definition of a servitude

Classification of a servitudes

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

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)

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

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

4.2. 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)

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

Tacit real security rights created by operation of law

Right of retention

- 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

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)

4.3. 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**

- 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

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.

It is further strongly recommended that you refresh yourself with the previous chapters that speak to real and limited real rights as this forms the basis of your knowledge for servitudes and how they will operate.

Another text that may be consulted is:

- Badenhorst P, Pienaar JM and Mostert H *Silberberg and Schoeman's The Law of Property* 5th edition (2006).

6. ASSESSMENT

Specific outcome	Assessment criteria	Assessment task
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 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	You must be able to: explain the meaning of a servitude, define and distinguish between praedial servitudes and personal servitudes; recognise whether a servitude was created or has been terminated, evaluate the appropriate way to enforce 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	You must be able to: distinguish between "real" and "personal" security, define real security, apply the specific rules of a particular real security	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

right to a problem question	right to a problem question	remedy to enforce the real security right
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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
Total:	<u>100 marks</u>

Test

There is one test designated for this course that will be written during the fourth 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 November examination. The test is **COMPULSORY**.

Assignment

There is one assignment for this course which will be due in the third 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. The assignment is **COMPULSORY**.

Examination

In November there will be two-hour paper that will be out of 70 marks. The questions will require you to explain legal rules and principles in a theoretical sense, to write a case note on leading precedents, as well as apply your 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.