LAW OF PROPERTY B
2023

1. INTRODUCTION

1.1 Overview

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.

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 studying 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.
- have a working knowledge of legal referencing and be able to apply these to their written work.

1.4 Lecturer Contact Details

The course is lectured by Mr Philip Bothma

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Email: Philip.Bothma@ru.ac.za

I have an open-door policy, but please feel free to schedule consultations via email or at the end of a lecture period.

2. OUTCOMES

2.1 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 and

information conveyed in the lecture room.
- communicate effectively in class debates and written assignments.
- use technology in legal research.
- recognise problem-solving contexts involving the law of property.

2.2 Specific Intended Outcomes

The purpose of the course is to provide students with:
- 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 acquisition, use and disposal of mineral rights in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 ('the MPRDA').
- An introduction to water as a natural resource, public trusteeship and water rights in terms of National Water Act 36 of 1998 ('the NWA') and the Water Services Act 108 of 1997 ('the WSA').
- 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.

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 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, and please feel free to contact the lecturer as and when you have questions.

Slides will be uploaded in PowerPoint. Each week will start with a general note of what we will cover in a given week and how this relates to the course. Property B is designed to encourage the application of legal principles to solve complex problems related to property law. Critical thinking and the ability to find appropriate solutions are of paramount importance.

There are **NINE (9)** scheduled **TUTORIALS**. These are generally not compulsory, although it is strongly recommended that you attend them. Those students who are in the 4-year LLB programme **MUST** attend the tutorials. These tutorials offer invaluable insight into the application of theory covered in formal lectures and further insight into assessment techniques through problem-solving scenario questions.

4.   COURSE CONTENT

- Chapter 9: Servitudes and restrictive conditions
- Chapter 10: Minerals
- Chapter 11: Water
- Chapter 12: Real Security

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.

<u>The prescribed textbook</u> for this course is **Mostert H and Pope A (eds.)** *The Principles of the Law of Property in South Africa* **2nd ed (2020) 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* 5th edition (2006); and
- Van der Walt AJ *Constitutional Property Law* 3rd edition (2012).

6.   STUDENT ASSESSMENT

- 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 acquisition, use and disposal of mineral rights in South Africa.
- Explain the concept of "public trust" as it relates to water rights in South Africa. Demonstrate a deep understanding of water as a natural resource and how it is governed by the National Water Act 36 of 1998 ('the NWA') and the Water Services Act 108 of 1997 ('the WSA').
- 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

7.   ASSESSMENT

The assessments will aim to enable you to solve problems related to property law, whether in tests, assessments or in practice.

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

Examination: out of 70 marks
Classwork: out of 30 marks
Total: **100 marks**

7.1 Test
There is one test designated for this course, which will be written during the first term. It will contribute 40% of the class mark. The test will contain questions set in a similar style to those that will be found in the examination. The test is **COMPULSORY.**

7.2 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 60% 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. Students must submit the assignment in hard copy.

7.3 Examination
In November, there will be a 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 purposes. 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 challenges regarding the course with the lecturer – either personally or through a class representative.

Good luck!

Kind regards,

Mr Philip Bothma