

# LAW OF PROPERTY A

## 2013

### 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 the students with an understanding of the purpose, scope and development of the law of property;
- familiarise students with the general principles of ownership and acquisition of real rights;
- enable students to classify and distinguish real and personal (creditor's) rights;
- introduce students to the sources of current law of property; and
- assist students in research and problem solving skills and the terminology commonly encountered in the law of property.

#### 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 understand:

- the meaning of “property”; the function and place of property law in South Africa; and know the scope and sources of South African property law
- the meaning of a “thing”; the relationship between a “thing”, rights and property; and the classification of “things”
- the distinction between real and personal rights; the principle of publicity; and the doctrine of notice
- the content and forms (including alternative forms) of ownership
- the limitations that the Constitution, private law and public law places on ownership
- the original and derivative forms of acquiring property in South African property law
- how property is protected in terms of real remedies, delictual remedies and a claim for unjustified enrichment

### **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

#### **4.2 The legal concepts of property**

Characteristics and definition of things  
 Relationship between things, rights and property  
 Classification of things

#### **4.3 Rights**

Conventional categories of rights

The distinction between real rights and personal rights  
The principle of publicity  
The doctrine of notice

#### **4.4 General principles of ownership**

Content of ownership  
Forms of ownership  
Alternative forms of title

#### **4.5 Limitation of ownership**

Constitutional limitations  
Private law limitations  
Public law limitations

#### **4.6 Acquisition of ownership**

Original forms of acquisition of ownership  
Derivative forms of acquisition of ownership

#### **4.7 Protection of ownership**

Real remedies  
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);
- Carey Miller D with Pope A *Land Title in South Africa* (2000);
- Pienaar GJ *Sectional Title and Other Fragmented Property Schemes* (2010);
- Van der Walt AJ and GJ Pienaar *Introduction to the Law of Property* 5<sup>th</sup> edition (2009)
- Van der Walt AJ *Constitutional Property Law* 3<sup>rd</sup> edition (2012);
- Van der Walt AJ *Law of Property Casebook for Students* 6<sup>th</sup> edition (2009);
- Van der Walt AJ *Property and the Constitution* (2012);
- Van der Walt AJ *The Law of Neighbours* (2010); and
- Van Wyk J *Planning Law* (2012).

## 6. STUDENT ASSESSMENT

| <b>Specific outcome</b>  | <b>Assessment criteria</b>   | <b>Assessment task</b>  |
|--|--|---|
| Understand the meaning of “property”; the function and place of property law in South Africa; and know 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   |
| Understand the meaning of a “thing”; the relationship between a “thing”, rights and property; and the classification of “things”                           | The student must be able to: define a “thing” in terms of its characteristics; explain the relationship between a “thing”, rights and property; classify “things”  | Write an essay on the definition of a thing in terms of its characteristics<br><br>Correctly classify a thing according to its negotiability or nature                          |
| Understand the distinction between real and personal rights; the principle of publicity; and the doctrine of notice  | The student must be able to: explain the difference between real and personal rights; explain the principle of publicity; explain the doctrine of notice   | Write an essay on why the distinction between real and personal rights is important, when this distinction is hard to draw, and how the courts have approached this distinction |
| Understand the content and forms (including alternative forms) of 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   |
| Understand the limitations that the Constitution, private law and public law places on ownership   | The student must be able to: distinguish between deprivations and expropriations; explain the meaning of nuisance and the general rules of neighbour law; understand the meaning and application of planning law | Identify the correct limitation for a factual problem and apply the requirements of that limitation to the facts  |
| Understand the original and derivative forms of acquiring property in South African property law   | The student must be able to: distinguish between the various forms of original acquisition of property; distinguish between the  | Identify the correct form of acquiring property for a factual problem and apply the requirements of that remedy to the facts  |

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|   | various forms of derivative acquisition of property   |  |
| Understand how property is protected in terms of real remedies, delictual remedies and a claim for unjustified enrichment | 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 compromised of the following components.

Examination: out of 70 marks  
Class work: out of 30 marks  
**Total: 100 marks**

### Test

There is one test designated for this course that will be written on 10 May 2013. 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 is due on 14 March 2013. It 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 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.