



WITS LAW SCHOOL

PROPERTY LAW

LAWS 3024

COURSE INFORMATION AND OUTLINE FOR 2013

Lecturers

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Name of Third Lecturer to be advised

The Course

Property Law is a full year, 36-point compulsory course for third-year LLB students. Students will be expected to develop a command of the four sources of property law: the Constitution, the common law, customary law and statute. The aim of the course is to develop a critical understanding of the role, content and interaction of these sources of property law, and to be able to apply them separately and together to concrete legal problems.

Classes

Students are divided up into three classes of equal size. Notice of the class to which you have been allocated, and of the venue of your lectures, will be posted in the Law Building. You are strongly advised to attend the class of the lecturer to whom you have been allocated, as that person will mark your script.

How to get the most out of Property Law

There is no prescribed textbook for the course. Attendance at lectures is accordingly fundamental to developing a sense of the course, and an understanding of what you need to know to do well. You will also be required to read certain material each week in order to prepare for class discussions on a given topic. You are strongly advised to do so.

Participation in lectures is essential to doing well on the course. Your lecturers have structured the course and the lectures to give you the opportunity to discuss and evaluate the principles with which you will be expected to be familiar. If you do not come to lectures and do not attempt to participate in discussions held during lectures, you risk faring very badly in the assessments.

Readings

Each aspect of the course outlined below contains compulsory readings, with which you must be familiar. Students who do not study the compulsory readings will fail this course. There are no shortcuts, and it is extremely unwise to rely on any one standard textbook.

Nonetheless, the following sources are worth consulting in your studies. You do not need to buy any of these books –

- Badenhorst et. al. *Silberberg and Schoeman's The Law of Property* (5 ed) (Butterworths) (2006)
- WE Cooper, *Landlord and Tenant* (2 ed) (Juta) (1994).
- CG van der Merwe, 'The Law of Things' in *The Law of South Africa* (2 ed) Volume 27, pages 103 to 355. (All references to this work in the course outline will be to "LAWSA Vol 27")
- CG van der Merwe and MJ de Waal, 'Servitudes' in *The Law of South Africa* (2 ed) Volume 24, 456 to 510. (All references to this work in the course outline will be to "LAWSA Vol 24")
- Hanri Mostert and Anne Pope (eds) *The Principles of the Law of Property in South Africa* (Oxford) 2010.
- T Roux 'Property' in Woolman and Bishop (eds) *Constitutional Law of South Africa* (ed) (Juta) (Last Revised May 2011) Chapter 46.
- AJ van der Walt *Constitutional Property Law* (3 ed) (Juta) (2011).
- AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009).
- AJ van der Walt *The Law of Neighbours* (1 ed) (Juta) (2010).
- AJ van der Walt *Property in the Margins* (Hart) 2009.

Of particular importance is, AJ van der Walt *Law of Property Casebook for Students* (7 ed) (Juta) (2009), which contains helpful extracts from some of the prescribed cases on the course. If you're struggling to find a case in the library, it may well be conveniently summarised in the Casebook. On the course outline, cases which appear in the Casebook are marked with an asterisk (*).

Assessment

The course is assessed by means of two examinations –

- The first exam, in May, will cover the first semester's work (roughly sections 1 to 6). It is a closed-book examination worth 40% of the course.
- The second exam, in November, will cover the remainder of the course (roughly sections 7 to 11). It will also be closed-book. It will be worth 60% of the course.

The assessments will contain a mix of theory and problem questions. Students will generally be expected to discuss the principles underlying the development of an area of law through the cases decided and statutes adopted in it, or to apply a set of principles derived from the cases to a new legal problem. You will be alerted to the structure of your assessments in your lectures, which is another good reason to attend them.

The Course

1. PROPERTY, SOCIETY AND THE LAW

Topic 1.1: Theories of Property Distribution

Marx, Nozick, Rawls and Locke.

Readings:

Handout to be provided

Thomas Coggin and Marius Pieterse, "Rights and the City: An Exploration of the Relationship between Socio-economic Rights and the City" *Urban Forum* (22 September 2011), pp. 1 – 22. Available on the teaching website.

David Harvey "The Right to the City" *New Left Review* 53 (September 2008). Available at

<http://newleftreview.org/II/53/david-harvey-the-right-to-the-city>

Topic: 1.2:

What are Property Rights?

The sources of property law, common law rights (including "real" and "personal" rights), statutory rights, customary law rights and the "new" property.

Readings:

Cases

Ex Parte Geldenhuys 1926 OPD 155*

First National Bank of SA t/a Wesbank v Commissioner, SARS 2002 (4) SA 768 (CC), paras 51 to 56.

City of Johannesburg v Blue Moonlight Properties [2011] ZACC 33, paras 34 to 38.

Statutes

Interim Protection of Informal Land Rights Act 31 of 1996.
Extension of Security of Tenure Act 62 of 1997, sections 1, 2, 3, 6 and 8.

Texts

AJ van der Walt, *Constitutional Property Law* (3 ed) pages 181 to 189.

2. THE CONSTITUTIONAL PROTECTION OF PROPERTY

Topic 2.1: Section 25 of the Constitution

Historical background and purpose; an introduction to distinction between “deprivation” and “expropriation”.

Readings:

Cases

Harksen v Lane 1998 (1) SA 300 (CC) paras 30 to 33 and 36 to 38.

Statutes

Constitution of the Republic of South Africa, 1996, section 25.

Texts

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapters 21 and 23.

Topic 2.2: Expropriations and Deprivations

Distinctions and overlaps between expropriation and deprivation of property; Arbitrary deprivation; Expropriation and compensation.

Readings:

Cases

First National Bank of SA t/a Wesbank v Commissioner, South African Revenue Services; First National Bank of SA t/a Wesbank v Minister of Finance 2002 (4) SA 768 (CC).
Mkontwana v Nelson Mandela Metropolitan Municipality; Bisset v Buffalo City Municipality; Transfer Rights Action Campaign v MEC for Local government and Housing, Gauteng 2005 (1) SA 530 (CC)
Reflect-All 1025 CC and others v MEC Public Transport Roads and Word, Gauteng Provincial Government and another 2009 (6) 391 (CC).
Haffegée NO v eThekweni Municipality 2011 (6) SA 134 (CC).

Texts

T Roux 'Property' in Woolman and Bishop (eds) *Constitutional Law of South Africa* (ed) (Juta) (Last Revised May 2011) Vol 3, Chapter 46, pp 46-17 to 46-36.

3. CUSTOMARY LAND LAW

Topic: Customary Land Rights
"Communal" tenure; "informal" land rights; aboriginal title.

Readings

Cases

Alexcor Ltd and Another v Richtersveld Community and others 2004 (5) SA 460 (CC)

Statutes

Interim Protection of Informal Land Rights Act 31 of 1996.

Texts

Ben Cousins, "Characterising 'communal' tenure: nested systems and flexible boundaries" in Claassens and Cousins (eds) *Land, Power and Custom: Controversies Generated by South Africa's Communal Land Rights Act* (UCT Press) (2008). Available on the teaching website.
LAWSA Vol 32 para 45.

4. THE COMMON LAW: THE NATURE OF REAL RIGHTS

Topic: What is a real right?
How have the Courts sought to define the nature of a real right? Is it convincing?

Readings

Cases

Hollins v Registrar of Deeds 1904 TS 603

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 2001 (3) SA 569 (SCA)*

Statutes

Section 63 (1) of the Deeds Registries Act 47 of 1937.

Texts

LAWSA Vol 27, paras 232 to 241.

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 3.

5. OWNERSHIP

Topic 5.1: Ownership & Planning, Nuisance, and Neighbour Law

What is the nature of the common law right to ownership?
What are its common law and statutory limitations?

Readings:

Cases

Regal v African Superslate 1963 (1) SA 102 (A) (headnote only)*

Gien v Gien 1979 (2) SA 1113 (T) (headnote only)*

Allacas Investments v Milnerton Golf Club 2008 (3) SA 134 (SCA).

Minister of Public Works v Kyalami Ridge Environmental Association 2001 (3) SA 1151 (CC).

Texts

LAWSA vol 27 paras 294 to 321.

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapters 4 and 7.

Topic 5.2: Co-ownership

What is the relationship between co-owners?

Readings:

Cases

Pretorius v Nefdt & Glas 1908 TS 854

Oblowitz v Oblowitz 1953 (4) SA 426 (C).

Texts

LAWSA Vol 27 paras 408 to 414

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 5.

6. ACQUISITION AND EXTINCTION OF OWNERSHIP

Topic 6.1: Original acquisition of ownership

Occupation, Accession, Specification, Prescription,
Expropriation and Forfeiture.

Readings:

Cases

Occupation

Reck v Mills 1990 (1) SA 751 (A)*

Accession

Macdonald v Radin 1915 AD 454

Khan v Minister of Law and Order 1991 (3) SA 439 (T)*

Gore NO v Parvatas 1992 (2) SA 363 (C)*

Standard Vacuum Refining v Durban City Council 1961 (2) SA 669 (A)*

Theatre Investments v Butcher Brothers 1978 (3) SA 682 (A)*

Melcorp SA v Joint Municipal Pension Fund 1980 (2) SA 214 (W).*

Konstanz Properties v WM Spilhaus and Co 1996 (3) SA 273 (A)*

Statutes

Game Theft Act 105 of 1991

Prescription Act 68 of 1969

Texts

LAWSA Vol 27 paras 322 to 326, 328, 332 to 340, 341, 344 to 359.

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 8.

Topic 6.2:

Derivative Acquisition of Ownership

Delivery, Forms of Constructive Delivery; Registration, Transfer of Land.

Readings:

Cases

Du Plessis v Proffitius 2010 (1) SA 49 (SCA)

Eriksen Motors v Protea Motors 1973 (3) SA 685 (A)

Commissioner of Customs and Excise v Randles Brothers 1941 AD 369

Lendlease Finance v Corporation De Mercadeo Agricola 1976 (4) SA 464 (A)

Groenewald v Van der Merwe 1917 SA 233*

Info Plus v Scheelke 1998 (3) SA 184 (SCA)*

Vasco Dry Cleaners v Twycross 1979 (1) SA 603 (A)

Quenty's Motors v Standard Credit Corp 1994 (3) SA 188 (A)*

Caledon v Wentzel 1972 (1) SA 270 (A)

Texts

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 9.

LAWSA Vol 27, 361 to 379

7. PROTECTION OF OWNERSHIP AND ITS LIMITATIONS

Topic 7.1: The Rei Vindicatio and its Limitations

The nature of the *rei vindicatio*; defences to it based on statute and on estoppel.

Readings:

Cases

The Rei Vindicatio

Chetty v Naidoo 1974 (3) SA 13 (A)*

Estoppel

Quenty's Motors v Standard Credit Corp 1994 (3) SA 188 (A)*

Grosvenor Motors v Douglas 1956 (3) SA 420 (A)

Concor Holdings v Potgeiter 2004 (6) SA 491 (SCA)*

The "PIE" Act

Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC)

City of Johannesburg v Blue Moonlight Properties [2011]

ZACC 33

Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd; President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd 2004 (6) SA 40 (SCA)

Statutes

Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998, sections 4, 6 and 7.

Extension of Security of Tenure Act 63 of 1997.

Texts

Stuart Wilson "Breaking the Tie: Evictions from Private Land, Homelessness and a new Normality" *South African Law Journal* 2009 vol 126 (2) pages 270 – 290.

Available on the teaching website.

Stuart Wilson "Planning for Inclusion in South Africa: The State's Duty to Prevent Homelessness and the Potential of Meaningful Engagement" *Urban Forum* 2011. Available on the teaching website.

Topic 7.2: Remedies in the Constitution and in Delict

Damages for loss of ownership rights and other remedies.

Readings:

Cases

Constitutional Damages

Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd; President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd 2004 (6) SA 40 (SCA)

City of Johannesburg v Blue Moonlight Properties 2011 (4) SA 337 (SCA)

City of Johannesburg v Changing Tides Properties 2012 (6) SA 294 (SCA)

Texts

LAWSA Vol 27 paras 385 to 388

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 10.

8. LIMITED REAL RIGHTS

Topic 8.1: Servitudes

What is a servitude? What is the difference between a praedial and personal servitude? How are servitudes acquired and extinguished? How are servitutorial rights protected?

Readings:

Cases

Servitudes in General

Lorentz v Melle 1978 (3) SA 1044 at 1049 – 1051*

Brink v van Niekerk 1986 (3) SA 428 (T)*

Linvestment v Hammersly 2008 (3) SA 283 (SCA)*

Praedial Servitudes

De Kock v Hanel 1999 (1) 1999 (1) SA 127 (E)

Van der Merwe v Wiese 1948 (4) SA 8 (C)

Schwedhelm v Hauman 1947 (1) SA 127 (E)

Venter v Minister of Railways 1949 (2) SA 178 (E)

Personal Servitudes

Willoughby's Consolidated Co v Copthall Stores 1913 AD 267*

Willoughby's Consolidated Co v Copthall Stores 1918 AD 1*

Durban City Council v Woodhaven 1987 (3) SA 555 (A).

Acquisition and Extinction of Servitudes

Cillie v Geldenhuys 2009 (2) SA 325 (SCA)

Grant v Stonestreet 1968 (4) SA 1 (A)*

Wahloo Sand v Trustees Hambly Parker Trust 2002 (2) SA 776 (SCA)*

Remedies

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

Texts

LAWSA Vol 24, paras 540 to 556, 576, 579 to 605 and 607 to 623

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 17.

Topic 8.2:

Real Security Rights

The Nature of Real Security; Focus on the various forms of real security rights: Mortgage, Pledge, Notorial Bonds, Liens.

Readings:

Cases

Accessoriness

Kilburn v Estate Kilburn 1931 AD 501

Mortgage

Thienhaus and Metje v Ziegler 1965 (3) SA 25 (A)*

Nulliah v Harper 1930 AD 141

Jaftha v Shoeman 2005 (2) SA 140 (CC)

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

Standard Bank v Saunderson 2006 (2) SA 264 (CC)

Rosouw and Another v First National Bank 2010 (6) SA 439 (SCA)

Pledge

Vasco Dry Cleaners v Twycross 1979 (1) SA 378 (SCA)*

Graf v Beuchel 2003 (4) SA 378 (SCA)

Notorial Bonds

Contract Forwarding v Chesterfin 2003 (2) SA 253 (SCA)*

Juglal NO v Shoprite Checkers 2004 (5) SA 248 (SCA)

Liens

Buzzard Electrical v 158 Jan Smuts Avenue Investments 1996 (4) SA 19 (A) (headnote only)*

Singh v Santam Insurance 1997 (1) SA 291 (A)

Statutes

Security by Means of Immovable Property Act 57 of 1993, Section 1.

Texts

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 19.

LAWSA Vol 15 part 2, paras 49 to 76

Topic 8.3:

Lease

The nature of a lease; essentials of the contract; *huur gaat voor koop*; duration, formalities, renewal, termination and cancellation; Impact of the Constitution and the Rental Housing Act on Residential Leases; Landlord's Hypothec

Readings

Cases

Maphango v Aengus Lifestyle Properties 2011 (5) SA 19 (SCA)
Hirschowitz v Moolman and others 1983 (4) SA 1 (T)
Proud Investments (Pty) Ltd v Lachem International (Pty) Ltd 1991 (3) SA 738 (A)
Ndlovu v Ncgobo 2003 (1) SA 113 (SCA)
Bloemfontein Municipality v Jacksons 1929 AD 266.

Statutes

Rental Housing Act 50 of 1999

Texts

AJ Kerr, *The Law of Sale and Lease* (3 ed) (2004), Chapters 15, 17 and pages 389-405; 456-457; 487-492.
Sharrock, *Business Transactions Law* (6 ed) (2004) pages 522 – 528.

9. POSSESSION

Topic 9.1: The Nature of Possession

What, legally speaking, is possession? What elements must be present before it is established?

Readings:

Texts

LAWSA Vol 27 paras 242 to 253
AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 14.

Topic 9.2: The Mandament van Spolie

What is the Mandament? How is it established? What are its limits? What is its relationship to the Constitution?

Readings:

Cases

Nature of the Mandament

Mthimkulu v Mahomed 2011 (6) SA 147 (GSJ)
Nino Bonino v De Lange 1906 TS 120*
Yeko v Qana 1973 (4) SA 735 (A)*

Common Law Limits

Telkom v Xsinet 2003 (5) SA 309 (SCA)
ATM Solutions v Olkru Handelaars 2009 (4) SA 337 (SCA)
Rikhosto v Northcliff Ceramics 1997 (1) SA 526 (W)

Constitutional and Statutory Impact

Tswelopele Non-Profit Organisation and others v City of Tshwane 2007 (6) SA 511 (SCA)
City of Tshwane Metropolitan Municipality v The Mamelodi Hostel Residents Association [2011] ZASCA 227, para 9.
Schubart Park Residents Association v City of Tshwane 2013 (1) BCLR 68 (CC)

10. LAND REFORM

Topic: 10:

Land Restitution

What is restitution? Distinction between restitution and redistribution. Who benefits? Why do they benefit? How do they benefit?

Readings:

Cases

Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd 2007 (6) SA 199 (CC)
Prinsloo and Another v Ndebele – Ndzundza Community and Others 2005 (6) SA 144 (SCA)
In Re Kranspoort Community 2000 (2) SA 124 (LCC)
Alexcor Ltd and Another v Richtersveld Community and others 2004 (5) SA 460 (CC)
Haakdoornbult Boerdary CC and others v Mphela and others 2007 (5) SA 596 (SCA).
Minister of Land Affairs and Another v Slamdien and Others 1999 (4) BCLR 413 (LCC).
Abrams v Allie NO 2004 (4) SA 534 (SCA).

Statutes

Restitution of Land Rights Act 22 of 1994

Texts

AJ van der Walt and GJ Pienaar *Introduction to the Law of Property* (6 ed) (Juta) (2009), Chapter 10.