Limitation on ownership

- INTRODUCTION
- STATUTORY LIMITATIONS
  - Taxation
  - Immovable property in general
  - Rural land
  - Urban land
  - Movable property
- PERSONAL RIGHTS OF THIRD PARTIES
- LIMITED REAL RIGHTS
- NEIGHBOUR LAW
Learning outcomes

After completing this unit the learner will be able to:

With regard to limitations on ownership:
- **Distinguish** between the four classes of limitations on ownership with the help of examples.
- **Collect, analyse, organise and critically evaluate** the statutory limitations on ownership.

With regard to Law of Neighbours:
- **Demonstrate** the understanding that ownership is part of a _set of related systems and problem solving do not exist in isolation_ by focussing on the differences between nuisance in the wide sense, nuisance in the narrow sense and nuisance and abuse of rights.
Learning outcomes (continued)

- **Identify** the obligations and **solve practical problems** regarding
  - nuisance,
  - encroachments,
  - elimination of danger,
  - natural flow of water and
  - lateral and surface support,
  by applying the remedies available and other responsible creative thinking processes.

- **Explain** the obligations;
- and **apply** the remedies of neighbours regarding the following:
  - lateral and surface support;
  - encroachments;
  - natural flow of water;
  - elimination of dangers;
Prescribed reading material:

- The learner must study chapter 7 (p 81 – 97) of the prescribed text book.
Recommended reading material:

- De Charmoy v Day Star Hatchery (Pty) Ltd 1967 4 SA 188 D.
- Flax v Murphy 1991 4 SA 58 W.
- Foentjies v Beukes 1977 (4) SA 964 (C)
  - Vogel v Crewe 2003 (4) SA 477 (T)
  - Lombard v Fischer 2003 (1) All SA 689 (O)
  - Trustees of the Brian Lackey Trust v Annandale 2003 (4) All SA 528 (C)
STATUTORY LIMITATIONS

- Taxation
- Immovable property in general
  - Restitution of Land Rights Act and other land reform legislation, eg. ESTA PIE and DFA.
  - Expropriation Act
  - Physical Planning Act
- Rural land
  - eg. Environment Conservation Act, National Environmental Management Act, Subdivision of Agricultural Land Act
STATUTORY LIMITATIONS (CONTINUED)

- Urban land
  - Verstappan v Port Edward Town Board
    1994 (D)

- Movable property
  - National Road Traffic Act
  - Drugs and Drug Trafficking Act etc.
Limitations (continued…)

- PERSONAL RIGHTS OF THIRD PARTIES
  - examples

- LIMITED REAL RIGHTS
  - examples

- LAW OF NEIGHBOURS
  - criterion of reasonableness
  - NUISANCE
    - Nuisance in narrow sense
    - Nuisance in wide sense
    - Nuisance and abuse of rights
NUISANCE

Nuisance in narrow sense
- principles
- examples
- remedies

Nuisance in wide sense
- damage
- examples
- remedies (and requirements)

Nuisance and abuse of rights
- subjective intention
LATERAL AND SURFACE SUPPORT

- Principles
- Remedies
- Decisions
ENCROACHMENTS

- Buildings
  - requirements
  - remedies
- Branches, leaves and roots
  - remedies
  - roots?
Limitation on ownership (continued)

- INTERFERENCE WITH NATURAL FLOW OF WATER
  - Rural land
  - Urban land
- ELIMINATION OF DANGER
1. X is the owner of a game farm outside Grahamstown. He has lost a large amount of money over the past years due to drought in the area. He decides to supplement his income from his farm by opening his gates for hunting expeditions to tourists and local hunters during the hunting season. His neighbour, Y, disapproves of any form of hunting. To show his disapproval, Y installs a device that interrupts the silence by automatically giving off a loud noise every 30 minutes. X realizes after a while that this noise is effectively frightening the game and that the paying hunters are becoming upset about the lack of sufficient deer to hunt. They gradually stop coming to hunt. X is angry about Y’s device and approaches you, his attorney. Advise X.
Unit Assessment

2. What is the difference between limitations on ownership based on limited real rights, and limitations based on personal rights?
Discuss critically the concept of “abuse of rights”.
4. How would you explain the legal principles enunciated in the following cases:

Malherbe v Ceres Municipality 1951 4 SA 510 A

Gien v Gien 1979 2 SA 1113 T

Regal v African Superslate (Pty) Ltd 1963 1 SA 102 A