LIMITED REAL RIGHTS (Servitudes)

Chapters 16 and 17
Learning outcomes of this unit:

- Classify servitudes by focusing on:
  - Entitlements and exercise thereof are acquired by the servitude holder;
  - The distinction between the main categories of servitudes as well as its characteristics;
  - Appraise the concerned parties’ respective rights and obligations regarding use, *ususfruct* and *habitatio*;
  - Applying the criteria used to distinguish between a personal or praedial servitude.

- Analyse the limitation of ownership by servitudes.
Learning outcomes of this unit (cont…):

- Analyse the acquisition of servitudes.
- Explain if unregistered servitudes can be enforced.
- Illustrate the remedies available to the servitude holder.
- Explain the termination of servitudes.
INTRODUCTION

- SERVITUDES
  - Praedial servitudes (imm property of another)
  - Personal servitudes (stays with person)

- REAL SECURITY
  - Cr Irr in property of dt to secure principal debt
  - Pledge(movable)
  - Mortgage(immovable)
  - Cession in securitatem debiti(incorporeal property)
INTRODUCTION (Continued…)

REAL SECURITY CREATED BY LAW
- Tacit hypothec of lessor (movable property of lessee)
- Tacit hypothec of credit grantor (CAA ownership retained)
- Judicial pledge (attachment by WOE)
- Statutory security rights

LIENS (CREATED BY OPERATION OF LAW TO SECURE OUTSTANDING DEBTS)
- Debtor-and-creditor liens
- Enrichment liens
SERVITUDES

- Definition
- CHARACTERISTICS
- CATEGORIES
  - Praedial
  - Personal
- GENERAL PRINCIPLES
  - Interpretation
  - Criterion of reasonableness
PRAEDIAL SERVITUDES

- **Definition**
- **Requirements**
- **Categories** (only know names and what it entails for short question)
PERSONAL SERVITUDES

- Definition
- Characteristics
- Categories (only know what it entails for short questions)
  - Usufruct
  - Use
  - Habitation
Other

- **ACQUISITION**
- **REMEDIES**
  - Of holder
  - Of owner
- **TERMINATION**
COMPARISON OF CHARACTERISTICS

- **PRAEDIAL SERVITUDE**
- Limited real right
- Specific entitlements over property of another
- Never positive duty on owner of property
- No servitude over own property
- Can be transferred but only with the dominant tenement
- Criterion of reasonableness
- Immovable property
- Two pieces of land
- In capacity as owner
- Accompanies ownership of dominant land
- Perpetual
- Located near each other
PERSONAL SERVITUDE

- Limited real right
- Specific entitlements over property of another
- Never positive duty on owner of property
- No servitude over own property
- Not transferable
- Criterion of reasonableness
- Movable or immovable
- One or none
- In personal capacity
- Never transferred, stays with person
- Death / 100 years
- Return salva rei substantia
Activity 1

- Discuss the characteristics of a praedial servitude.
- Briefly distinguish between the common law servitudes of usufruct (*usufructus*), use (*usus*), and habitation (*habitatio*).
- Discuss the rules of interpretation that are applied where there is doubt whether a servitude is praedial or personal in nature.
- Discuss the guidelines laid down in *Van Rensburg v. Coetzee* 1979 (4) SA 655 (A) in respect of a so-called way of necessity.