

Faculty of Law

Legal Interpretation

Course Outline 2016

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**INTRODUCTION**

**Purpose of the course**

This course aims to develop the students’ critical thinking skills while equipping them with the ability to:

* Read and work with case law
* Understand and explain judicial precedent
* Interpret the meaning of legislative provisions by applying the rules of statutory interpretation
* Understand and explain constitutional interpretation
* Deconstruct and explain legal reasoning
* Write clear and concise legal arguments

**Assumptions of Prior Learning**

The lecturer in this course assumes that you are able to:

* Find cases and legislation
* Recognise, identify and solve legal problems
* Communicate effectively in English (written and spoken)
* Conduct in-depth research and comply with conventions of ethical referencing
* Take charge of your own studies and organise your time accordingly

**COURSE OBJECTIVES/ LEARNING OUTCOMES**

By the end of the course you are expected to:

* Understand and explain the Doctrine of Judicial Precedent
* Distinguish between findings of fact and law
* Distinguish between Rationes Decidendi and Ober Dicta
* Explain the application of the Constitution and legislation as sources of legal authority
* Distinguish between the various rules and approaches to statutory interpretation
* Organise and manage your time and resources effectively

The specific outcomes for each section/topic of the work are outlined in the reading list.

**TEACHING METHODS**

The two principal modes of teaching and learning in this course are lectures and tutorials.

**Lectures:** Lectures are participatory in nature and you may be called upon to comment on the prescribed readings. Students are therefore expected to prepare adequately for lectures and tutorials. Where necessary the lecturer will supplement course materials with illustrations and explanatory summaries.

**Tutorials:** The tutorials are primarily aimed at assisting in having a firmer grasp of the course content as well as with tackling and solving legal problems. Tutorials require active participation and students are thus expected to attend having already attempted to generate a solution(s) for the tutorial problem(s).

Attendance and the submission of tutorial answers is compulsory. Students are strongly encouraged to make use of this platform to enhance their legal interpretation skills. A register will be taken during tutorials for DP purposes.

Students will not be granted DP certificates if they miss more than two tutorials and/or if they fail to submit tutorial answers. If a student misses tutorials due to a valid reason they must complete and submit a Leave of Absence form along with supporting documents which serve as proof of the reason for absence. Refer to the Survival Guide for more information regarding DP requirements.

**RESOURCES FOR THE COURSE**

Prescribed Text:

L.M. du Plessis *The Re-interpretation of statutes* (2002) (Butterworths)

Recommended:

Christo Botha *Statutory Interpretation: An Introduction for Students* 5th ed (2005) (Juta)

Burger AJ *A Guide to Legislative Drafting in South Africa* (2002) (Juta)

G.E. *Devenish The Interpretation of Statutes* (1992) (Juta)

E.A. Kellaway *Principles of Legal Interpretation* (1995) (Butterworths)

**ASSESSMENTS**

Your competence will be assessed at a number of points during the semester.

1. **Research Assignment**

This will be a group assignment. The assignment question will be released on Wednesday, 16 March 2016 and the completed assignment is due on Wednesday, 6 April 2016. This assignment will account for 10% of your total mark. Further details pertaining the assignment and group allocation will be communicated in class.

1. **Class Test**

The test will be written on Friday, 06 May 2016 (time and venue TBC). The test will account for 20% of your final mark. You will be tested on **all** the work covered in the first term. The questions in this test may take the form of theory and/or problem-type question. Students should not expect an exam scope as one will not be provided. The aim is to assess your knowledge of the rules and principles relating to legal interpretation and your ability to solve legal problems using legal reasoning. The test will be for a total of 40 marks and the duration of the paper will be 2 hours.

1. **Examination**

The exam will be written during the June/July examination cycle and will account for 70% of your final mark. It will cover everything taught in the first semester. The exam will be for a total of 50 marks with duration of 2 ½ hours.

Similarly to the tests, questions in the exam may take the form of theory and/or problem-type question. No scope will be provided.

**COURSE CONTENT**

The following is an overview of the topics to be covered in this course. A reading list containing prescribed cases, articles and the relevant parts of the textbook to be studies for each section is provided separately. A copy of this outline together with the reading list and other relevant resources will be uploaded on *RU Connected*.

**Topics**

1. **Introduction**
2. **Constitutional Interpretative Mandate (Transformative Constitutionalism)**
3. **Judicial Precedent**
4. The Doctrine of Precedent
5. Rules of Precedent
6. Findings of Fact and Law
7. Rationes Decidendi and Obiter Dicta
8. **Statutory Interpretation**
9. Legislation and the Constitution
10. Characteristics of Legislation
11. Original and Delegated Legislation
12. Conflict between Legislation
13. The Need for Interpretation
14. Approaches to Interpretation
15. Rules of Construction and Presumptions
16. **Interpretation of other Primary and Secondary Sources of Law**
17. Common Law
18. Customary Law
19. International Law
20. Foreign Law
21. Modern/legal writings