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LEGAL THEORY 2
LEGAL INTERPRETATION
COURSE OUTLINE

2009



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Room s5 – Faculty of Law

1 INTRODUCTION

Overview

Legal interpretation is a self-standing semester course that counts as a credit in the Faculty of Law LLB2, as well as comprising one of the four component courses in Legal Theory 2 in the Faculties of Humanities, Science and Commerce. Students who pass Legal Interpretation as part of Legal Theory 2 are exempted from the course in the LLB curriculum. The purpose of the course is to provide insight into the nature and function on the process of legal interpretation in South Africa. More particularly:

- To introduce students to the nature of legal reasoning by studying case law
- To provide students with the ability to be able to read, interpret and understand enacted law and case law
- To provide students with a thorough understanding of the various principles, theories and techniques relevant to the interpretation of enacted law and case law
- To provide students with the ability to understand the nature of constitutional interpretation
- To provide the students with the ability to understand and apply the principles of judicial precedent
- To assist students in being able to identify and solve authentic legal problems with regard to the interpretation of enacted law and judgments
- To assist students in extracting principles from statutes, law reports and other sources
- To familiarise students with legal concepts and terminology commonly encountered in statutes and law reports

Credit Value

7.5 Credits

Assumptions of Prior Learning

In order to complete this course successfully students need to:

- Be capable of writing and communicating in coherent English
- Know where and how to access resources such as text books, law reports and statutes in the law library
- Have a working knowledge of basic legal concepts and terminology
- Be capable of independent learning
- Be able to read, analyse and extract principles from law reports, statutes and other sources
- Have a basic understanding of the layout of statutes and court judgments

- Have a basic understanding of problem-solving techniques
- Have working knowledge of legal referencing conventions and to be able to apply these to their written work

2 OUTCOMES

Critical Outcomes

At the end of this course students will be able to”

- Recognise problem-solving contexts involving issues of legal interpretation
- Organise and manage their work load
- Communicate effectively in class debate and in written assignments
- Use technology in legal research
- Collect, analyse and evaluate information from the various sources of law

Intended Specific Outcomes

The legal interpretation course is designed so that students who successfully complete this course should be able to:

- Understand, explain and critically analyse the various principles, theories and techniques relevant to the process of legal interpretation
- Apply the different methods of interpretation to the interpretation of legislation and court judgments
- Understand the nature of constitutional interpretation and particularly the way in which constitutional interpretation impacts on the interpretation of ordinary legislation and court judgments
- Understand and explain the principles of judicial precedent
- Understand how precedents may be used in legal argument and to apply this understanding to the solution of practical problems

3 TEACHING METHOD

Students will be expected to assume responsibility of their own learning. Students will experience much difficulty in this course if they do not keep up right from the beginning and the extent of their knowledge at the end of the course will depend on the effort they put into the course. Students will be provided with a study guide which contains guidelines and exercise questions according to which they

must prepare for lectures, i.e. before each contact session students must work through the material for that contact session with reference to the guidelines in the study guide.

Although the course will initially entail discussion of the theoretical aspects of legal interpretation, case law and excerpts from statutes, which will be made available to students on RUconnected, will serve as the basis for discussing current trends of legal interpretation. Lectures during which such case law and statutory examples will be discussed will be interactive classes and students will be expected to be able to participate intelligently in discussions on the application of legal interpretation methods.

There will be two to three compulsory tutorials during the course of the semester. Details regarding tutorial times and groups will be communicated to students in due course. Students will be required to prepare typed assignments (not exceeding two typed pages) for each tutorial. The reason for requiring typed answers is to make sure that students spend some time with the cases before each tutorial: the idea is that the tutorials are discussion classes where the students can assess their understanding of the prescribed case law and the application of the different methods of legal interpretation. The tutors will meet with the lecturer before each tutorial for an in-depth discussion of the tutorial work in order to ensure that students receive sufficient guidance in the tutorial classes.

4 Sources

Christo Botha *Statutory Interpretation: An Introduction for Students* 4th ed (2005) (Juta)

Lourens M du Plessis *Re-Interpretation of Statutes* (2002) (Butterworths)

Kellaway *Principles of Legal Interpretation* (1995) (Butterworths)

Devenish *The Interpretation of Statutes* (1992) (Juta)

5 ASSESSMENT

The final mark for the course is comprised of the following components:

Examination: 70 marks

Class Work: 30 marks (incl assignment and test)

Total: 100 marks

The class work component is made up of one test and one assignment. The test and assignment will each contribute 15 marks towards the final mark out of 100. The dates for the test and assignment will be communicated to students as soon as possible. The test will be set in the same format as the examination paper.

For the examination students will write a 2-hour paper in June counting 70 marks. Students can expect multiple choice questions, problem-type questions and/or essay-type questions in the examination.

The attendance of lectures and, particularly tutorials, are compulsory. A class register will be taken during contact sessions in order to gauge student involvement in the course for DP purposes.

SPECIFIC OUTCOMES:	ASSESSMENT CRITERIA:	ASSESSMENT TASKS:
To understand, explain and critically analyse the various principles, theories and techniques relevant to the process of statutory interpretation.	<ul style="list-style-type: none"> ✓ Describe the content of the various principles, theories and methods relevant to the process of statutory interpretation. ✓ Evaluate critically the advantages of the various theories and methods of statutory interpretation ✓ Compare and contrast the different theories and techniques of statutory interpretation. ✓ Demonstrate an understanding of terminology relevant to interpretation of statutes. 	<ul style="list-style-type: none"> ✓ Write short essays (whether for tutorials, test, assignment or examination) supported by authority, in which the various principles, theories and methods of statutory interpretation are explained. ✓ Write short essays in which the advantages and disadvantages of particular principles, theories and methods of interpretation are discussed. ✓ Write short essays in which the different theories of interpretation are compared and contrasted.
To apply the different approaches and methods in the interpretation of enacted law.	<ul style="list-style-type: none"> ✓ Identify the relevant legal issue of statutory interpretation that needs to be resolved. ✓ State the relevant law and discuss the relevant legal precedents with regard to that issue. ✓ Apply the law to the facts in order to come to a reasoned conclusion about the problem. 	Write judgments or opinions in which a practical problem of statutory interpretation is analysed and solved on the basis of the relevant law and precedents.
To understand the nature of constitutional interpretation and the way in which the Constitution impacts on the interpretation of ordinary legislation.	<ul style="list-style-type: none"> ✓ Describe and explain the principles of constitutional interpretation. ✓ Apply the principles of constitutional interpretation to assist in resolving problems of statutory interpretation, 	<ul style="list-style-type: none"> ✓ Write an essay, supported by authority in which the principles of constitutional interpretation are discussed and explained. ✓ Write case notes on selected leading precedents on constitutional interpretation where you critically analyse the judgments in these precedents. ✓ Explain and apply any

		relevant principles of constitutional interpretation during the course of writing a judgment or opinion on a problem of statutory interpretation.
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6 EVALUATION

The course is evaluated on a three-year cycle instituted by the Faculty. The Rhodes University Web-based Evaluation Assistant is used to conduct the evaluation. The students evaluate the course by filling in a questionnaire that requires them to respond to specific questions, as well as giving them an opportunity to make handwritten comments about good and bad aspects of the course. A member of staff who is not involved in teaching the course administers the evaluation in class. The responses are then sent to the Evaluation Assistant which compiles a computerised report, detailing statistically and graphically how the students responded to the specific questions. The documentation is then passed on to an Academic Development Specialist in the Centre for Higher Education, Research, Teaching and Learning (CHERTL), who incorporates the freeform responses of the students in a global report on the evaluation of the course. The evaluation is usually conducted towards the end of the course and if time permits, a review of the results is conveyed to the students.

An external examiner assesses the quality of the examination paper in terms of the questions set as well as students' answers. The external examiner must complete a report on the course as required by University policy.

7 COURSE CONTENT

INTRODUCTION:

Lecture 1: A Bird's eye view of the course Legal Interpretation

SECTION A: STATUTORY INTERPRETATION

Lecture 2: The Significance of Statute Law and Classification of Legislation

Lecture 3: Citation of Legislation

Lecture 4: Hierarchy and Status of Legislation

Lecture 5: Commencement, Amendment and Demise of Legislation

Lecture 6: Amendment and Demise of Legislation (continued)

Lecture 7: Theories on Statutory Interpretation

Lecture 8: Theories on Statutory Interpretation (continued)

Lecture 9: Canons or Way Marks for Legal Interpretation (gleaned from the theories)

Lecture 10: Common-law Presumptions of Statutory Interpretation

- Lecture 11: The Impact of the Constitution on Statutory Interpretation
- Lecture 12: The 5 Methods of Interpretation: (1) Grammatical Interpretation
- Lecture 13: (2) Systematic Interpretation
- Lecture 14: (3) Purposive and Teleological Interpretation
- Lecture 15: (4) Historical Interpretation; (5) Comparative Interpretation
- Lecture 16: Evaluating the 5 Methods: A *Collective* Tool – Case Study
- Lecture 17: Constitutional Interpretation: Case Study

SECTION B: INTERPRETATION OF COURT JUDGMENTS

- Lecture 18: Reading Court Judgments: How to approach it
- Lecture 19: General Analysis of Court Judgments: Case Study
- Lecture 20: Precedent and Legal Reasoning
- Lecture 21: Interpreting Case Law: Case Study

REVISION:

- Lecture 22: Students to bring any questions about the work to class