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LEGAL THEORY 2  
LEGAL INTERPRETATION  
2011  
COURSE OUTLINE



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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 legal resources
- 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
- Have a basic understanding of the layout of court judgments

# 2 OUTCOMES

## Critical Outcomes

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

- Understand the general structure of statutes
- Extract issues specifically related to the interpretation of statutes
- Extract issues specifically related to the analysis and interpretation of court judgments
- Apply the various theories of interpretation
- Understand the meaning of concepts such as *ratio decidendi*, *obiter dictum*, *stare decisis*
- Identify the *ratio decidendi* in court judgments and distinguish it from *obiter dicta*
- Know when and why particular court judgments can be used as precedents
- Organise and manage their work load
- Communicate effectively in class debate and in written assignments
- Know and apply the basic requirements for academic writing
- Use technology effectively in legal research

### **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. 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. Students are thus required to work through the material relevant for each contact session *before* they attend the contact session.

The course will start with a discussion of the theoretical aspects of legal interpretation. Thereafter, case law and excerpts from statutes will serve as the basis for discussing various trends of legal interpretation. All discussion materials will be made available on *RUconnected*. Lectures during which the case law and statutory examples are discussed will be interactive classes and students will be expected to participate 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. 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

### Prescribed Textbook:

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

### Recommended Additional Reading:

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

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

LM Du Plessis *Re-Interpretation of Statutes* (2002) (Butterworths)

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

## 5 LECTURE AND TUTORIAL ATTENDANCE

Attendance of lectures and tutorials is compulsory. The Law Faculty regards attendance at lectures as an inherent part of the course, similar to obtaining a pass mark in an examination. Therefore, register will be taken during these contact sessions in order to gauge student involvement in the course for DP purposes. Students will not be granted DP certificates if they miss more than 6 lectures. This rule stands **regardless** of whether students have approved Leave of Absence (LOA), **unless** there are exceptional circumstances that caused the students to miss the lectures. Refer to p45 of the *Survival Guide* for more information on DP requirements.

If students miss lectures or tutorials due to a valid reason, they must fill out a Leave of Absence (LOA) request form at the Law Faculty's administrative office. Supporting documents (such as doctors' certificates) must be attached to and submitted with the LOA request. Supporting documents serve as proof of valid reasons for absence and it will aid in establishing whether exceptional circumstances exist. Refer to p 44-47 of the *Survival Guide* for information on requirements and procedure for LOA's.

## 6 ASSESSMENT

	Maximum
<b>Class Work</b>	<b>25</b>
<b>Tutorial Assignment</b>	<b>5</b>
<b>Examination</b>	<b>70</b>
<b>Total</b>	<b>100</b>

In order to pass this course, students must obtain a final performance mark of 50 out of 100.

The **Class Work** component is made up of one **test** and one **assignment**. The test and assignment each count a total of 25 marks. The **average** of the test and assignment marks will constitute the Class Work component.

#### **EXAMINATION:**

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

Students who fail Legal Interpretation, may be granted supplementary examinations subject to the policy of the university. For more information regarding **requirements** for being granted the opportunity to write **supplementary and rewrite examinations**, see **p34-35 of the Survival Guide**.

### **TAKE CARE TO NOTE THE FOLLOWING ARRANGEMENTS REGARDING THE TEST AND THE ASSIGNMENT:**

#### **TEST:**

**Date:** 4 March 2010  
**Time:** 19:00  
**Venues:** Eden Grove Blue and Red Lecture Theatres

#### **ASSIGNMENT:**

**Submission Deadline:** 15:00 on Friday 23 April 2010  
No late submissions will be accepted.

**Where to Submit:** Assignment box marked "Mrs Liezel Niesing" in the corridor between the law faculty's administration office and moot complex.

**Requirements:**

- ⇒ All assignments must be typed, printed and stapled.
- ⇒ All assignments must have a signed Rhodes University Plagiarism Declaration as front page. No assignment will be accepted without such declaration.
- ⇒ Assignments must be typed in one of the following fonts at 12pt size with 1.5 line spacing: Arial, Arial Narrow, Calibri, Cambria or Times New Roman
- ⇒ Any other requirements will be communicated to students when the assignment topic is discussed during the first week of lectures.

**Table of Outcomes and Assessment Criteria:**

<b>SPECIFIC OUTCOMES:</b>	<b>ASSESSMENT CRITERIA:</b>	<b>ASSESSMENT TASKS:</b>
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"> <li>✓ Describe the content of the various principles, theories and methods relevant to the process of statutory interpretation.</li> <li>✓ Evaluate critically the advantages of the various theories and methods of statutory interpretation</li> <li>✓ Compare and contrast the different theories and techniques of statutory interpretation.</li> <li>✓ Demonstrate an understanding of terminology relevant to interpretation of statutes.</li> </ul>	<ul style="list-style-type: none"> <li>✓ 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.</li> <li>✓ Write short essays in which the advantages and disadvantages of particular principles, theories and methods of interpretation are discussed.</li> <li>✓ Write short essays in which the different theories of interpretation are compared and contrasted.</li> </ul>
To apply the different approaches and methods in the interpretation of enacted law.	<ul style="list-style-type: none"> <li>✓ Identify the relevant legal issue of statutory interpretation that needs to be resolved.</li> <li>✓ State the relevant law and discuss the relevant legal precedents with regard to that issue.</li> <li>✓ Apply the law to the facts in order to come to a reasoned conclusion about the problem.</li> </ul>	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"> <li>✓ Describe and explain the principles of constitutional interpretation.</li> <li>✓ Apply the principles of constitutional</li> </ul>	<ul style="list-style-type: none"> <li>✓ Write an essay, supported by authority in which the principles of constitutional interpretation are discussed and explained.</li> </ul>

	interpretation to assist in resolving problems of statutory interpretation,	<ul style="list-style-type: none"> <li>✓ Write case notes on selected leading precedents on constitutional interpretation where you critically analyse the judgments in these precedents.</li> <li>✓ Explain and apply any relevant principles of constitutional interpretation during the course of writing a judgment or opinion on a problem of statutory interpretation.</li> </ul>
To be able to analyse court judgments by identifying the material facts and the ratio decidendi.	<ul style="list-style-type: none"> <li>✓ Systematic exposition of the court's rationale in light of the material facts.</li> <li>✓ Distinguish between the ratio decidendi and non-binding or persuasive <i>dicta</i>.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Discuss and/or compare case law by applying the principles of the doctrine of precedent.</li> </ul>

## 7 COURSE 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, as well as the students' answers to the questions. The external examiner must complete a report on the course as required by University policy.

## 8 COURSE CONTENT

### INTRODUCTION:

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

**SECTION A: STATUTORY INTERPRETATION**

Lecture 2: Significance, Purpose and Classification of Legislation

Lecture 3: Citation of Legislation

Lecture 4: Hierarchy and Status of Legislation

Lecture 5: Commencement and Amendment of Legislation

Lecture 6: Amendment (continued) and Demise of Legislation

Lecture 7: Interpretation Act 33 of 1957

Lecture 8: Theories of Statutory Interpretation

Lecture 9: Methods of Interpretation: (1) Grammatical Interpretation

Lecture 10: (2) Systematic Interpretation

Lecture 11: (3) Purposive and Teleological Interpretation

Lecture 12: (4) Historical Interpretation; (5) Comparative Interpretation

Lecture 13: Evaluating the 5 Methods from a Constitutional Perspective: Case Study

Lecture 14: Canons of Statutory Interpretation: Rules and Presumptions

Lecture 15: Impact of the Constitution on Statutory Interpretation

Lecture 16: Nature of legal reasoning when interpreting statutes and court judgments

**SECTION B: THE DOCTRINE OF PRECEDENT: WHY, WHEN AND HOW TO USE CASES AS PRECEDENTS**

Lecture 17: Role of case law in South Africa; doctrine of precedent (*stare decisis*); *ratio decidendi*; *obiter dictum*

Lecture 18: Reading and Analysing Court Judgments: Identifying the *ratio decidendi*

Lecture 19: Case Studies: Identifying whether a case can serve as a precedent

Lecture 20: Doctrine of precedent and interpretation of statutes

Lecture 21: Case Study

**REVISION:**

Lecture 22: Revision of Section A

Lecture 23: Revision of Section B