

# COMMERCIAL LAW 202: PAPER 1

## SPECIAL CONTRACTS: THE LAW OF SALE, LEASE & CARRIAGE

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Acknowledgment:

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## **1. INTRODUCTION**

Welcome to Commercial Law 202, Paper 1 in 2014. This handout supplements your general information handout for Commercial Law 2. It contains general information regarding Paper 1 and includes the three modules for this course, namely:

- (a) The Law of Sale;
- (b) The Law of Lease; and
- (c) The Law of Carriage.

### **1.1 Overview**

The law of sale, lease and carriage is one of two Commercial Law courses offered in the first semester to second year level students registered in the Faculty of Commerce (COL 201, paper 1 and COL 202, paper 2). Approximately 70% of the course is dedicated to the law of sale and lease in equal measure, with carriage taking up the remainder of course. The purpose and outcomes of the course follow and expand upon the South African Institute for Chartered Accountants' (SAICA) recommendations for law courses.

In general, the course aims to provide insight into the nature and function of the law of sale, lease and carriage in South Africa. In particular, the course aims to ensure that students have insight into the principles governing trading transactions and the rights and responsibilities of parties to a contract of purchase and sale, letting and hiring and carriage. In addition, the purpose of the course is to introduce students to the relevant legislation relating to each topic and to give them an understanding of some of the more common legal situations which can arise in a sale, carriage or lease relationship and how situations are dealt with by the law.

### **1.2 Credit Value**

7.5 Credits.

### **1.3 Assumptions of Prior Learning**

In order successfully to complete this course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Have a basic working knowledge of the South African legal system, legal terminology and the general principles of contract learnt and applied in Commercial Law 101.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library and on the intranet.
- Be capable of independent learning.

## **2. OUTCOMES**

### **2.1 Critical Outcomes**

Students will be able to:

- identify and solve practical legal problems.
- organise and manage themselves and their work load.
- communicate effectively in class debate and class assessments.
- use technology in legal research.
- analyse and evaluate information.

## **2.2 Intended Specific Outcomes**

The course is designed so that students successfully completing this course should be able to achieve the following outcomes:

- To understand and explain the essential elements of a valid contract of sale, lease and carriage.
- To understand and explain some of the key legal consequences of entering into a contract of sale, lease and carriage.
- To understand and explain the legal duties that are imposed upon parties, and the consequences that flow if these duties are breached.
- Apply the knowledge acquired during the course to solve practical problems with regard to specific contracts.
- To recognise and explain the features of special contracts, particularly those regulated by statutes.

## **3. TEACHING METHODS**

Commercial Law 202, Paper 1 consists of three different sections, namely, the law of sale, the law of lease and the law of carriage – taught in the second semester by **Ms Sarah Macqueen**. Separate modules (attached) are provided for each section of the course. These modules set out the basic structure of the topics to be covered in each section. Students are expected to read ahead in the module for the next lecture in order to acquire a basic familiarity with the relevant topic. Lectures will be presented by means of *viva voce* lectures and PowerPoint presentations will be utilised where appropriate. It is important that students note that the modules provided are not comprehensive. Some topics require responses to questions posed in the module, while some topics will be covered orally in class only. Students are therefore expected to take their own notes in lectures to supplement each module. Occasionally, students will be expected to explain case law and consider practical questions in class.

## **4. ASSESSMENT**

There will be two formal tests for Commercial Law 202, Paper 1 which will make up the course's class work component. The test will be combined with Commercial Law 202: Paper 2. Please refer to the general information handout for information regarding dates and venues.

Students will be presented with typical examination questions during lectures from time to time. These questions will cover material already lectured upon and students will be guided through the process of answering these questions. This exercise will enable students to have instant feedback on how well they have assimilated knowledge.

<b>Specific outcomes</b>	<b>Assessment criteria</b>	<b>Assessment tasks</b>
To understand and explain the essential elements of a valid contract of sale, lease and carriage.	<ul style="list-style-type: none"> <li>• Define and explain the essential elements of the specific contracts studied in the course.</li> <li>• Apply any relevant statutory and common law principles to specific contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
To understand and explain the legal obligations that are imposed upon parties to specific contracts, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> <li>• Define and explain the various legal duties of parties to specific contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to specific contracts.	<ul style="list-style-type: none"> <li>• Identify and discuss the relevant legal problem or issue.</li> <li>• Apply the applicable law to the legal problem or issue.</li> <li>• Conclude with reference to remedies available, if appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
To recognise and explain the features of special contracts, particularly those regulated by statute.	<ul style="list-style-type: none"> <li>• Discuss the important or unique features of special contracts.</li> <li>• Discuss the legal requirements that attach to certain contracts regulated by statutory enactments.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>

## 5. RESOURCES

Students will be provided with a module for each section of the course which will in turn include a list of recommended texts. Please note that there are **no** prescribed texts for this course. However, there are several general Commercial Law textbooks which are very useful, as well as the relevant volumes of LAWSA (the Law of South Africa) which you will be able to find in the reference section of the Law Library (see some examples listed below). You will also need to consult legislation from time to time (specifically in reference to the law of carriage). Legislation can be accessed on the internet via the Rhodes library webpage. Click on the Netlaw database on the electronic information resources library site.

J Scott (ed)	<i>The Law of Commerce in South Africa</i> (2009) OUP: Cape Town.
D Collier-Reed and K Lehmann (ed)	<i>Basic Principles of Business Law</i> (2006) LexisNexis: South Africa.
Govindjee <i>et al</i>	<i>Commercial Law 2: Fresh Perspectives</i> (2007) Pearson: South Africa.
Govindjee <i>et al</i>	<i>Commercial Law 1: Fresh Perspectives</i> (2006) Pearson: South Africa.
Nagel <i>et al</i>	<i>Commercial Law</i> (2006) 3 ed Lexisnexis Butterworths: Durban.
Visser <i>et al</i>	<i>Gibson: South African Mercantile and Company Law</i> (2000) 8 ed Juta: Cape Town.

## **COURSE CONTENT**

### **LAW OF SALE**

**Section 1 - The definition and essentials of the contract**

**Section 2 - The legal effect of the contract: ownership, risk and benefit**

**Section 3 - Seller's Duties and Buyer's Remedies**

**Section 4 - Buyer's Duties and Seller's Remedies**

**Section 5 - Sales regulated by Statute**

### **LAW OF LEASE**

**Section 1 - Introduction: Definition, Essentials and Formalities of a contract of lease**

**Section 2 - The lessor's obligations and the lessee's remedies**

**Section 3 - The lessee's obligations and the lessor's remedies**

**Section 4 - The legal position of the lessee: subletting, cession, assignment, *Huur gaat voor koop***

**Section 5 - Termination of a lease agreement**

**Section 6 - Renewal of a lease**

### **LAW OF CARRIAGE**

**Section 1 - Introduction: Purpose and importance of the law of carriage**

**Section 2 - The Common Law Contract of Carriage: Definition, Parties and the Praetor's Edict**

**Section 3 - The obligations of the consignor and the carrier**

**Section 4 - Commencement, termination and limitation of liability and remedies**

**Section 5 - Carriage by Road and Rail**

**Section 6 - Carriage by Sea**

**Section 7 - Carriage by Air**

# THE LAW OF SALE

## 1. COURSE INFORMATION

As set out above, Commercial Law 201 Paper 1 consists of three different sections, namely, the law of sale, the law of lease and the law of carriage. This module contains information on the first section of the course, namely, the law of sale. The law of sale will be taught over approximately the first 9/10 lectures in the first semester.

## 2. MODULE INFORMATION

This module sets out the basic structure of the topics to be covered in the law of sale. Students are expected to read ahead in the module for the next lecture in order to acquire a basic familiarity with the relevant topic. It is important that students note that the module is **not** comprehensive. Some topics require responses to questions posed in the module, while some topics will be covered orally in class only. Students are therefore expected to take their own notes in lectures to supplement the module. Occasionally, students will be expected to explain case law and consider practical questions in class.

## 3. RECOMMENDED TEXTBOOKS

Please note that there are **no** prescribed texts for this course. However, you have been referred to several general Commercial Law textbooks above which you may want to consult. Should you wish to have a more in-depth knowledge of the law of lease, please consult Professor A J Kerr's *The Law of Sale and Lease* (2004) 3 ed Butterworths: Durban and R H Zulman *Norman's Law of Purchase and Sale in South Africa* (2005) 3 ed LexisNexis: Durban.

## COURSE OUTLINE

### 1. Introduction to the Law of Sale

- 1.1 Definition
- 1.2 Essentials of a Contract of Sale

### 2. The legal effects of the contract

- 2.1 Passing of Ownership
- 2.2 Risk and Benefit

### 3. The seller's obligations and the buyer's remedies

Introduction – relations between the parties to a sale

- 3.1 The seller's obligations
  - 3.1.1 Care of the Thing Sold
  - 3.1.2 Making the Thing Sold Available (the duty to deliver)
  - 3.1.3 Warranty against Eviction
  - 3.1.4 Duty to Deliver the *res* free from Defects

(The buyer's remedy for a breach of the obligation follows each subsection)

### 4. The buyer's obligations and the seller's remedies

- 4.1 Introduction
  - (a) Payment of the Purchase Price
  - (b) To remove the *res*, or if it is brought to him, to receive it.
  - (c) Reimbursement of the Seller's Necessary Expenses
- 4.2 The seller's remedies

### 5. Sales regulated by Statute

- 6.1 Alienation of Land Act 68 of 1981
- 6.2 National Credit Act 34 of 2005
- 6.3 Electronic Communications and Transactions Act 25 of 2002
- 6.4 The Consumer Protection Act 68 of 2008



## THE LAW OF LEASE: GENERAL INFORMATION

### 1. COURSE INFORMATION

Commercial Law 201 Paper 1 consists of three different sections, namely, the law of sale, the law of carriage and the law of lease. This module contains information on the last section of the course, namely, the law of lease. The law of lease will be taught over approximately 8/9 lectures.

### 2. MODULE INFORMATION

This module sets out the basic structure of the topics to be covered in the law of lease. Students are expected to read ahead in the module for the next lecture in order to acquire a basic familiarity with the relevant topic. It is important that students note that the module is **not** comprehensive. Some topics require responses to questions posed in the module, while some topics will be covered orally in class only. Students are therefore expected to take their own notes in lectures to supplement the module. Occasionally, students will be expected to explain case law and consider practical questions in class.

### 3. RECOMMENDED TEXTBOOKS

There are **no** prescribed texts for this course. However, as stated previously, I have referred you to several general Commercial Law textbooks which are very useful in your general information handout on Paper 1. Should you wish to have a more in-depth knowledge of the law of lease, please consult Professor A J Kerr's *The Law of Sale and Lease* (2004) 3 ed Butterworths: Durban.

## THE LAW OF LEASE: COURSE OUTLINE

### **Section 1 - Introduction**

- 1.1 Definition
- 1.2 Essentials of a contract of lease
- 1.3 Formalities and the parties

### **Section 2 - The obligations of the lessor and remedies available**

- 2.1 Introduction
- 2.2 The obligation to deliver the thing let to the lessee free from impediments and in a fit condition for the purpose leased.
- 2.3 The obligation to ensure the lessee's undisturbed use and enjoyment of the thing let.
- 2.4 The obligation to pay the rates and taxes.

### **Section 3 - The obligations of the lessee and remedies available**

- 3.1 Introduction
- 3.2 The obligation to pay rent
- 3.3 The obligation to take proper care of the property and use it only for the purpose for which it was let.
- 3.4 The obligation to restore the property on termination of the lease in the same good order and condition as it was when it was received.

### **Section 4 - The legal position of the lessee**

- 4.1 Introduction
- 4.2 Subletting
- 4.3 Cession
- 4.4 Assignment
- 4.5 *Huur gaat voor koop*

### **Section 5 - Termination of a lease agreement**

- 5.1 Introduction
- 5.2 Termination by effluxion of time
- 5.3 Termination by notice
- 5.4 Termination by death
- 5.5 Termination by insolvency
- 5.6 Lessee's right to compensation for improvements

### **Section 6 - Renewal of a lease**

- 6.1 Introduction
- 6.2 Express renewal
- 6.3 Tacit renewal

## THE LAW OF CARRIAGE: GENERAL INFORMATION

### 1. COURSE INFORMATION

Commercial Law 201 Paper 1 consists of three different sections, namely, the law of sale, the law of lease and the law of carriage. This module contains information on the second section of the course, namely, the law of carriage. The law of carriage will be taught over approximately 5-6 lectures in the second term after the law of lease section of the course.

### 2. MODULE INFORMATION

This module sets out the basic structure of the topics to be covered in the law of carriage. Students are expected to read ahead in the module for the next lecture in order to acquire a basic familiarity with the relevant topic. Lectures will be presented by means of *viva voce* lectures and PowerPoint presentations will be utilised where appropriate. It is important that students note that the module is **not** comprehensive. Some topics require responses to questions posed in the module, while some topics will be covered orally in class only. Students are therefore expected to take their own notes in lectures to supplement the module. Occasionally, students will be expected to explain case law and consider practical questions in class.

### 3. RECOMMENDED TEXTBOOKS

Please note that there are no prescribed texts for this course. However, there are several general Commercial Law textbooks which are very useful, as well as the relevant volume of LAWSA (the Law of South Africa) which you will be able to find in the reference section of the Law Library. These texts will help you familiarise yourself with the topic under discussion and will assist you when supplementing your class notes. Some general Commercial Law textbooks have chapters on the law of carriage.

These are set out below. PLEASE NOTE that the information is some of these texts is outdated:

Nagel (ed)	<i>Commercial Law</i> (2006) 3ed Lexisnexis Butterworths: Durban.
Govindjee <i>et al</i>	<i>Commercial Law 2: Fresh Perspectives</i> (2007) Pearson: South Africa.
Collier-Reid and Lehmann (ed)	<i>Basic Principles of Business Law</i> (2006) LexisNexis: Butterworths: South Africa.
F du Bois (ed)	Wille's Principles of South African Law 9 <sup>th</sup> ed (2009) Juta: Cape Town.

## CONTENTS

### **Part 1: Introduction**

- 1.1 Purpose and scope of the course
- 1.2 Mediums of carriage
- 1.3 Nature of things conveyed

### **Part 2: The Common Law Contract of Carriage**

- 2.1 Definition of a Contract of Carriage
- 2.2 Parties to a Contract of Carriage
- 2.3 Elements of a Contract of Carriage
- 2.4 Formalities and special terms
- 2.5 Praetor's Edict

### **Part 3: The obligations of the consignor and the carrier**

- 3.1 The obligations of the consignor
  - 3.1.1 The obligation to deliver the goods to the carrier
  - 3.1.2 The obligation to accept delivery at destination
  - 3.1.3 The obligation to pay the agreed or proper freight
- 3.2 The obligations of the carrier

### **Part 4: Commencement, termination and limitation of liability**

- 4.1 Scope of liability of carrier when transporting goods
  - 4.1.1 Types of Carrier
  - 4.1.2 Edict *de nautis, cauponibus et stabulariis*
- 4.2 Commencement of Liability
- 4.3 Termination of Liability
- 4.4 Successive Carriers
- 4.5 Avoidance of Liability
- 4.6 Remedies

### **Part 6: Carriage by Road and Rail**

- 5.1 Carriage by Road
  - 5.1.1 The Road Transportation Act 74 of 1977
  - 5.1.2 Road Transportation Contracts
- 5.2 Carriage by Rail
  - 5.2.1 The Legal Succession to the South African Transport Services Act 9 of 1989
  - 5.2.2 Standard Form Contract
  - 5.2.3 Contracts of carriage of commuters

## **Part 6: Carriage by Sea**

- 6.1 The Carriage of Goods by Sea Act 1 of 1986
- 6.2 The Hague-Visby Rules
  - 6.2.1 Background
  - 6.2.2 Applicability of the Rules as incorporated into the Act
- 6.3 Terminology
- 6.4 The Bill of Lading
- 6.5 General Liability of the Carrier by Sea

## **Part 7: Carriage by Air**

- 7.1 Classes of Carriage
- 7.2 The Carriage by Air Act 17 of 1946
  - 7.2.1 The Montreal Convention
  - 7.2.2 The Air Waybill / Cargo Receipt
  - 7.2.3 Rights of the consignor and consignee against the Carrier
- 7.3 Overview of the liability provisions of the Montreal Convention (as incorporated into the Carriage by Air Act)
  - 7.3.1 Personal Injury
  - 7.3.2 Damage to Baggage and Cargo
  - 7.3.3 Damage cause by delay in the carriage by air of passengers, baggage or cargo
- 7.5 Limitation in amount of liability in relation to delay, baggage and cargo
- 7.6 Defences available to the carrier
- 7.7 Jurisdiction
- 7.8 'Non-Montreal' International Carriage and Domestic Carriage

**- END OF COURSE OUTLINE -**