



RHODES UNIVERSITY

**COMMERCIAL LAW 202**  
**PAPER 1**  
**SPECIAL CONTRACTS**  
**2015**

**LECTURER: MR LUTHO DZEDZE**

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## **OUTCOMES**

### **Critical Outcomes**

Students will be able to:

- (a) identify and solve practical legal problems.
- (b) organise and manage themselves and their work load.
- (c) collect, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.
- (e) use technology in legal research.
- (f) recognise problem-solving contexts involving the law.

### **Intended Specific Outcomes**

Paper 1 of the course is designed so that students who successfully complete this course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand and explain the essential elements of a valid contract of sale, lease and carriage.
- (b) Understand and explain some of the key legal consequences of entering into a contract of sale, lease and carriage.
- (c) Understand and explain the legal duties that are imposed upon parties to the special contracts under review, and the consequences that flow if these duties are breached.
- (d) Apply the knowledge acquired during the course to solve practical problems with regard to sale contracts.

### **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. In lectures, the substantive law will be discussed and leading precedents from the case law may be discussed. Occasionally, students will be expected to consider practical questions in

class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards.

## **RESOURCES**

The prescribed texts are:

1. CJ Nagel *Commercial Law* (4th ed, Lexus Nexus, 2011)
2. A Govindjee et al *Commercial Law: Fresh Perspectives* Cape Town : Pearson/Prentice Hall, 2007.

Other recommended texts are:

3. Graham Glover *Kerr's The Law of Sale and Lease* (4th edition, LexisNexis, 2014).
4. RH Zulman and G Kairinos: *Norman's Purchase and Sale in South Africa* (5th ed, Butterworths, 2005)
5. Joubert, W (ed): *The Law of South Africa*, vol 24 (2nd ed), section on Sale by Kerr & Glover

Students will be guided during the lectures when additional reading is required.

## **STUDENT ASSESSMENT**

1. The class mark component of COL 202 amount to 30% of the final mark. COL 202 will be examined in November 2015. The marks for Papers 1 and 2 will be added together and reduced to a mark out of 70. The remaining 30 marks will be calculated on the basis of the tests written during the relevant semester.
2. Two two-hour exams will be written in June 2015 and November 2015 i.e. one examination each for Papers 1 and 2.

3. There will be two **compulsory** class tests written for COL 202.
  - COL 202 TEST 1  
Monday 24 August 2015 during the lecture slot at 9.35am in Sociology B
  - COL 202 TEST 2  
Tuesday 13 October 2015 during the lecture slot at 10.30am in Sociology B
4. The tests will last for 45 minutes. The tests will contain two questions which are both compulsory and each question will be out of 20 marks, therefore a total of 40 marks for the whole test. The subject matter of each test will be equally split between the contents of Paper 1 and Paper 2.

## **PART A**

### **1. GENERAL INTRODUCTION, AND THE DEFINITION AND ESSENTIALS OF THE CONTRACT OF SALE**

#### **GENERAL INTRODUCTION (ELEMENTARY OUTLINE OF THE LAW OF CONTRACT)**

- REQUIREMENTS FOR A VALID CONTRACT
  1. CONSENSUS:
    - a) OFFER
    - b) ACCEPTENCE
  2. CONTRATUAL CAPACITY
  3. LAWFULNESS
  4. PHYSICAL POSSIBILITY & CERTAINTY
  5. FORMALITIES
- Further Reading: C J Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) Ch 3.85 – 3.105, Ch 4.01 – 4.51, Ch 5.01- 5.51, Ch 6.01 – 6.51, Ch 7.01 – 7.17

#### **DEFINITION OF A CONTRACT OF SALE**

- Glover *Kerr's Law of Sale and Lease* (4<sup>th</sup> Edition) pg 3
- C J Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) 13.01 – 13.08
- *Treasurer- General v Lippert* 1883 (2) SC 172

#### **ESSENTIALS OF THE CONTRACT OF SALE**

- AGREEMENT
- THE THING TO BE SOLD ( *res vendita* or the *merx*)
  1. Things that can be sold:
    - a) *res sua*
    - b) unascertained goods
    - c) future goods

- i) *Emptio rei speratae*
  - ii) *Emptio Spei*
  - d) *Res aliena* (somebody else's thing)
  - e) Things which are the subject of litigation *in rem (res litigiosa)*
- 2. Things that cannot be sold:
  - a) *Res extra commercium*
  - b) Things which cannot exist (initial impossibility)
  - c) Things which have ceased to exist at the date of sale (supervening impossibility)
  - d) *Pacta de quota litis*
  - e) The sale of a right of inheritance
- PRICE (*pretium*)
  1. Serious,
  2. Fixed, or capable of ascertainment, an
  3. Must sound in current money
- Readings: CJ Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) 13.09 – 13.30
- Glover Kerr's *Law of Sale and Lease* (4<sup>th</sup> Edition) pg 3 – 5

#### **EFFECT OF STATUTE ON THE LAW OF SALE**

- Consumer Protection Act 68 of 2008
- CJ Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) 13.31– 13.70
- Glover Kerr's *Law of Sale and Lease* (4<sup>th</sup> Edition) pg 7 - 15

## 2. LEGAL EFFECTS OF THE CONTRACT

- THE PASSING OF OWNERSHIP

- i) Immovable Property
- ii) Movable Property

a) Delivery

b) Payment of the Purchase Price

- THE COMMON LAW OF RISK AND BENEFIT

a) Meaning of Risk and Benefit and circumstances it may occur

b) Risk

i) Definition

ii) Where the Risk Lies (General Rule)

iii) Exceptions to the General Rule

a) Where the parties have agreed to the contrary (in their contract)

b) Where specific goods still have to be weighed, measured or counted

c) Unascertained goods

d) Where there is default by either party

c) Benefit

i) Definition

### READINGS:

- CJ Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) 14.01– 14.40
- Glover *Kerr's Law of Sale and Lease* (4<sup>th</sup> Edition) pg 305 - 322

### 3. THE DUTIES OF THE SELLER AND THE REMEDIES OF THE BUYER

- Introduction

#### **(A) The seller is required to take care of the *res vendita* until the *merx* is made available**

- Explanation of the duty (*Frumer v Maitland* 1954 (3) SA 840 (A) at 845) and its difference to risk
- Qualifications to the rule:
- Mora: (*Wingerin v Ross* 1951 (2) SA 82 (C)).
- Variation by agreement
- The buyer's remedies

#### **(B) The seller's duty to make the thing sold available**

- Explanation of the duty

(a) To make the thing available at the agreed time and place

(b) Made available in the condition that it was at the time of sale.

(c) The thing must be made available in accordance with the specifications regarding size, quantity, quality or any other aspect agreed upon in the contract of sale.

(d) The buyer must be placed in a position whereby he acquires immediate *vacua possessio* (undisturbed possession)

(e) The seller must at his own expense do whatever is necessary to make the thing sold available to the buyer.

- The buyer's remedies

#### **(C) The seller's duty to transfer ownership if he has it, or can obtain it, failing which, to warrant the buyer against eviction**

- Transfer of ownership
- The warranty against eviction

Three basic requirements must be met before the seller will become liable on the buyer's eviction:

(a) Eviction (actual or threatened)



(b) Notice

(c) The buyer is required to put up a determined defence against the claim of the third party

Statutory reinforcement: s 44(1)(d) of the Consumer Protection Act.

- The buyer's remedies

**(D) The duty to make the *res vendita* available free from defects/diseases**

READINGS:

- CJ Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) Chapter 14
- Glover *Kerr's Law of Sale and Lease* (4<sup>th</sup> Edition) Chapter 7 and 8

**4. THE BUYER'S OBLIGATIONS AND THE SELLERS REMEDIES**

**(A) Payment of the purchase price**

Manner of payment

Time of payment

Cash sales: (*Breytenbach v Van Wyk* 1923 AD 541 at 546)

Credit sales

Place of payment

**(B) To remove the thing or, if it is brought to him, to receive it**

Consequences if the buyer fails to remove or receive the thing timeously

**(C) To reimburse the seller's necessary expenses**

**(D) Remedies**

READINGS:

- CJ Nagel (ed) *Commercial Law* (4<sup>th</sup> Edition) Chapter 15.01 – 15.15
- Glover *Kerr's Law of Sale and Lease* (4<sup>th</sup> Edition) Chapter 9

## **PART B**

### **THE LAW OF LEASE**

#### **1. INTRODUCTION**

#### **2. DEFINITION OF THE LAW OF LEASE**

#### **3. ESSENTIALS OF THE CONTRACT OF LEASE**

- a) Use and enjoyment
  - i) Subject matter of the contract
  - ii) Property must be identifiable and identified
  - iii) The Lessors ownership
- b) Rental to be paid
  - i) Certain and ascertainable
  - ii) Amount of Rent

#### **4. FORMALITIES**

#### **5. THE DURATION OF THE LEASE**

#### **6. OBLIGATION OF THE LESSOR**

- a) Deliver the thing, free from impediments
- b) Ensure undisturbed use and enjoyment
- c) Pay Rates and Taxes
- d) Remedies

#### **7. OBLIGATIONS OF THE LESSEE**

- a) Pay Rent
- b) Take Proper Care of the Property
- c) Restore Property on termination in same good order/ condition
- d) Remedies

#### **8. RIGHTS AND POWERS OF TENANTS**

- a) Subletting
- b) Cession
- c) Assignment
- d) Huur gaat Voor Koop

## **9. THE RENTAL HOUSING ACT**

- a) Introduction
- b) The Scope of the Act
- c) Prevention of Discrimination
- d) Formalities for Leases subject to the Act

## **10. THE TERMINATION OF THE LEASE AGREEMENT**

- a) Introduction
- b) Effluxion of Time
- c) Termination by Notice
- d) Termination by Death
- e) Termination by Insolvency
- f) Leases under the Consumer Protection Act
- g) Miscellaneous Issues

## **11. RENEWAL OF A LEASE**

- a) Express Renewal
- b) Tacit Renewal

READINGS: For Part B see G. Glover *Kerr's Law of Sale and Lease*

## **PART C**

### **THE LAW OF CARRIAGE**

#### **1. INTRODUCTION**

- a) Purpose and scope
- b) Mediums of carriage
- c) Nature of contract

#### **2. THE COMMON LAW OF CONTRACT**

- a) What is Carriage? / Definition
- b) The Parties to a Contract of Carriage
- c) Duties of the Parties
- d) The Contract of Carriage
- e) Formalities

### **3. THE OBLIGATIONS OF THE CONSIGNOR**

- a) The obligation to deliver the goods to the carrier
- b) The obligation to accept delivery at the destination
- c) The obligation to pay the agreed or freight

### **4. THE OBLIGATIONS OF THE CARRIER**

- a) Main duty

### **5. LIABILITY**

- a) Public carrier
- b) Private carrier
- c) *Edict de nautis, cauponibus et stabularis*
- d) Remedies

### **6. TYPES OF CARRIAGE AND THE EFFECT OF STATUTE**

- a) Carriage by sea
- b) Carriage by road and rail
- c) Carriage by air

- READINGS. A Govindjee et al Commercial Law: Fresh Perspectives Cape Town: Pearson/Prentice Hall, 2007.

### **ACKNOWLEDGEMENT**

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**LUTHO DZEDZE**

**JULY 2015**