

# RHODES UNIVERSITY FACULTY OF LAW

## FINAL YEAR LLB ELECTIVES: 2019

*Note: Keep this booklet for use at the beginning of 2019:  
fresh booklets will not be issued*

This booklet gives an outline of electives currently recognised by the Senate that may be offered to final year LLB students. It is possible, depending on staffing arrangements and available expertise, that some of these electives may not be on offer in any particular academic year, once final academic planning is complete. Announcements about what is/is not on offer will be made to the class directly. Note that the information under each entry below is not the official course outline for these courses.

Students who were placed on the Dean's list in their preceding year of study (penultimate year LLB) may if they wish register for three electives in one semester and one elective in the other semester.

### FIRST SEMESTER

#### Alternative Dispute Resolution

The course is divided into two parts. Negotiation and Mediation comprises approximately two thirds of the course, while Arbitration comprises approximately one third of the course.

The Negotiation and Mediation section of the course consists of a theoretical and a practical component. It is a skills-orientated course, designed not only to expose students to the practical skills required during negotiations and mediations, but also to provide a theoretical context for such skills and the analytical skills to adapt to various circumstances. Particular emphasis is placed on developing group, inter-personal and problem-solving skills.

Students will also be able to develop a range of broader, transferable life skills for dealing with issues of professional and personal life, including: basic negotiation and mediation skills; a methodical approach to problem solving; confidence in oral communication; working effectively in teams; and the importance of responding with integrity and moral courage in professional contexts.

Some of the learning principles upon which this course is based are:

- Skills are best learnt by working things out for oneself.
- It is assumed that students will bring some prior knowledge, experience, attitudes and skills into the course.
- To develop skills, students need to have the opportunity of practising them and obtaining feedback.

At the end of the course, students will have the ability to conduct negotiations and simple mediations, and should have developed effective techniques for autonomous

learning and problem-solving, which can be applied in both their professional and personal lives.

The Arbitration section of the course focuses on commercial arbitration and includes:

- Factors influencing the choice between arbitration and other methods of dispute resolution: the case for arbitration.
- The South African legislative framework.
- Arbitration rules with a particular focus on the UNCITRAL Rules, comparing these briefly with at least one other set of arbitration rules, for example the rules of the London Court of International Arbitration.
- The arbitration agreement, including practical drafting exercises.
- Enforcing the agreement to arbitrate.
- Conduct of the arbitration hearing.
- The arbitration award and enforcement thereof.
- Judicial review of arbitration awards.

Depending on time availability we may also look at:

- Ethics in arbitration, including the arbitrator's duty of disclosure.
- Punitive damages in arbitration awards.
- The arbitration of constitutional and other statutory rights.

Assessment will take four forms:

- Assignment (10% of overall result)  
An assignment will be set on an aspect of arbitration.
- Student journal (20% of overall result)  
The journal must record students' learning in the negotiation and mediation part of the course.
- Practical examination (20% of overall result)  
Internal and external examiners will assess students' negotiation and communication skills in a negotiation exercise.
- Theoretical examination (50% of overall result)  
A two hour written examination in June will assess students' understanding of the readings and theoretical concepts.

**Note:** maximum number of students for this course is 30.

## **International Human Rights and Humanitarian Law**

The purpose of the course is to introduce students to the main principles of international human rights law and elements of international humanitarian law both of which represent significant advances in international law since the creation of the United Nations in 1945. Students will be introduced to the rules of international law affording protection to individuals during peace (under the international law of human rights) and in circumstances of armed conflicts (under international humanitarian law). This course will cover the history and nature of international human rights law; selected civil and political rights as well socio-economic rights; enforcement of international human rights law standards; selected topics in international humanitarian law.

The materials for the course will mainly be journal articles, jurisprudence of international adjudicatory organs, and leading texts in aspects selected for study. Students should be prepared to cover these readings before lectures and be able to discuss the main issues during class in a participatory and interactive fashion with the lecturer.

## **International Trade Law**

The course aims to give a broad overview of both private and public international trade law.

The course is divided into two parts, namely the law of the World Trade Organization and international commercial contract law. The first of these components will be the Law of the World Trade Organization which will be taught mostly in the first term and will cover topics such as trade policy instruments, most favoured nation and national treatment from the GATT, as well as some of the other peripheral agreements and regional trade agreements and how these fit into the multilateral trading system. In the private international trade law component, students will be introduced to the different stages in international commercial dispute resolution, including jurisdiction and choice of law rules, before considering some of the substantive law in this area: in particular the provisions of the United Nations Convention on the International Sale of Goods will be considered. This component will be taught in the second term.

## **Law of Banking and Payments**

This course is designed for students who have an interest in, or wish to pursue careers in, banking, financial services, insurance, financial regulation and compliance, or the combating of financial crimes. It will also be of use to those wishing to be general commercial lawyers.

The course is divided into four parts. The first part deals with the law governing various methods of payments – cheques, bills of exchange, promissory notes, credit cards and electronic transfers. The second part of the course examines the law relating to documentary credits. The third part of the course looks at measures for the detection and prevention of money laundering, with a focus on the Financial Intelligence Centre Act (“FICA”). The final part of the course looks at banking regulation, including the role of the Reserve Bank, and issues such as exchange control regulations.

While the focus of the course is obviously South African law, students will also need to look at English law, on which much of South African banking and financial law is based, and we will periodically look at Zimbabwean law for comparative purposes.

## **Law of Copyright & Trade Marks**

We live in a world dominated by trade marks (brands) and copyright material (books, music, art, movies, computer programmes etc). Trade marks are words or symbols used by traders in relation to goods and services that distinguish them from those of

other traders. Copyright is the exclusive right to deal with original works and it protects the fruits of creative effort.

This course examines the monopolies that are conferred on these branches of intellectual property as well as the legal implications at a national and international level.

## **Legal Accounting**

Legal Accounting is aimed at providing students with a working, theoretical and practical knowledge of general principles of accounting with special emphasis on Trust Accounts. This course prepares the student who wishes to take the attorneys' admission examination. The purpose of the course is to provide students with a basic knowledge and understanding of the variety of transactions essential to complete an adequate set of books and to design a plan of accounts to suit the needs of a legal enterprise.

This course has been designed on the assumption that students have prior knowledge of basic business documentation and procedures, i.e. invoices, receipts, bank statements, etc. As the course is practically founded, students are required to be proficient in the use of financial calculators.

## **SECOND SEMESTER**

### **Competition Law**

The course aims specifically to meet the needs of students intending to pursue careers in corporate law. The course is divided into three major sections and one minor section. The first part of the course will cover: the objects of, and rationale for, competition law; a brief history of the regulation of competition; restrictive horizontal practices: legislation and cases; restrictive vertical practices: legislation and cases; the abuse of dominance: legislation and cases; and institutions, procedures and remedies. The second part of the course deals with merger regulation from a competition law (rather than a Takeover Regulation Panel) point of view.

The third part of the course considers the private law governing wrongs committed by companies, and the remedies available to companies, within the context of competition law. This will include consideration of property rights, and the laws of contract and delict from a competition law point of view.

Finally, time permitting; we will look at selected aspects of international competition law, particularly those that impact upon South African-based multinational companies.

### **Constitutional Litigation**

Supremacy of the Constitution requires all law (including all the law that you have studied and will study next year!) to be in compliance with the constitutional standard. This standard is enforced by our courts. In this course you will consider the 'how' and 'what then' of constitutional litigation.

The course is designed to reach the following goals:

- to introduce students to the practice and the procedures involved in litigating constitutional issues, specifically in the Constitutional Court;
- to critically evaluate remedies in constitutional litigation and
- to develop and refine critical thinking in respect of certain aspects of constitutional law. As such the course is an advanced constitutional law course. This goal allows scope for negotiation of the curriculum of the course (i.e. consensus is reached in class on the topics to be covered in the course).

The research essay component of this course allows the individual student to focus on an area of constitutional law of his/her choice.

### **Environmental Law**

Environmental Law is a very broad and ever-expanding field. The elective course is therefore a fairly broad introduction to the field, dealing mostly with South African law, but also covering some aspects of international environmental law instruments.

During the course we will look at some of the legal and philosophical bases of environmental law, before examining how international environmental law operates, and the most important treaties underpinning this. We will then analyse the environmental clause in the Constitution, in conjunction with the relevant case law. The course then moves on to look at the main framework legislation underpinning

South African environmental law, and how this has been interpreted by the Courts. Included in this will be the legal framework underpinning the Environmental Impact Assessment (EIA) process.

The course is assessed as follows: Assignment: 20%, Test: 10%, Exam: 70%. The assignment takes the form of a research paper in which students are encouraged to undertake a more in-depth analysis of an aspect of environmental law that interests them.

Environmental Law in South Africa is based mainly on legislation, and one of the main aims of the course is to introduce students to the most important legislative instruments, so that they learn how to interpret these and put them into practice. In this respect, the growing body of case law and legal opinion is important. Upon completing the course students should have the skills necessary to find the relevant legislative instruments relating to particular aspects of the environment, to apply them, and to be able to offer legal opinion on these.

### **Introduction to Conveyancing**

The purpose of this course is to introduce students to the basic concepts and procedures of conveyancing, with an emphasis on the Deeds Registries Act 47 of 1937 and regulations relating thereto. It is a useful course for students going into practice who wish to do their Conveyancing exam but also for those students who, for general background, would like to know how the sale and transfer of immovable property operates.

The course covers deeds of sale, how instructions are received by the conveyancer, the content of a deed of transfer, how the transfer is actually effected, the different kinds of mortgage bonds that are available, as well as the different kinds of applications that one would make as a conveyancer where one of the parties loses a deed, wishes to sub-divide his/her property or consolidate it.

Conveyancing requires precision and accuracy in drafting documents, and students who are strong on detail and drafting will find that it is a very rewarding course.

### **IsiXhosa for Law**

The course is a discipline-specific introduction to isiXhosa language and culture. Communication skills developed and cultural knowledge imparted are essential in legal professional-client interactions.

It is intended that at the end of the course the students will be:

- Equipped with basic linguistic competency to be able to cope in situations where they have to conduct interviews with clients speaking isiXhosa,
- Equipped with appropriate cultural knowledge so that they are able to understand and respond appropriately in situations where isiXhosa is spoken,
- Made familiar with common cultural misunderstandings that emanate from inter- and cross-cultural communication, especially in relation to various legal contexts.

IsiXhosa for Law is a beginner course; therefore mother tongue speakers of isiXhosa will not be allowed to enrol for it.

The course, although an introductory course, assumes that students taking it will be senior students in the Law Faculty and, for this reason, it will be challenging in such a way that they see its applicability in their legal training. Therefore, the course is intended to add value to the general learning experience of a senior law student. Cultural knowledge acquired during this course can also be transferred to other linguistic contexts.

## **Law of Tax & Estate Planning**

A basic knowledge of taxation is fast becoming a selling point for prospective employers, not just in law firms. Accounting and audit firms are recruiting law graduates with knowledge of taxation for employment in their legal compliance departments. The Law of Taxation and Estate Planning elective is aimed at providing candidates with a basic theoretical knowledge of certain important aspects of the Income Tax Act 58 of 1962, the Value-Added Tax Act No. 89 of 1991 and the Tax Administration Act No 28 of 2011. In particular, attention is drawn to the following:

- Residence and source, including taxation of non-residents in SA and the application of withholding taxes
- Gross Income Definition (Section 1 Income Tax Act)
- Special inclusions in gross income (Section 1 Income Tax Act)
- Trade deductions (specifically S11(a) Income Tax Act)
- Anti-avoidance provisions (prohibited deductions - S23 Income Tax Act)
- Selected special deductions (Section 11 Income Tax Act)
- Introductory elements of capital gains tax, especially with regard to property transactions (Eighth Schedule to the Income Tax Act)
- Tax planning and anti-avoidance provisions (Sections 80A-L), 103(2) & (5) Income Tax Act)
- Anti-avoidance in estate planning, Trust structures (Sections 7 & 25B Income Tax Act)

A weekly tutorial is held to work through class examples, past test and exam questions, and for scenario analyses. Attendance at these tutorials is, like lectures, mandatory.

Texts are made available in the Law Library. There is no prescribed text for this course.

On-line study material is made available through LexisNexis on-line, and in 2018 access will be given to freeware videos that have been produced by academics at the University of Cape Town in conjunction with GetSmarter. These are widely regarded as valuable learning tools.

The course is theory-based, and will not require the use of financial or any other calculators. Complex calculations will not be required.

## ACROSS BOTH SEMESTERS

### International Moot Competition (one credit)

Students who have participated in the African Human Rights Moot Court Competition, or any other international mooting competition, are permitted with the approval of the Dean to present the work done for this competition, as well as an analysis of their experiences of being involved in such a competition, in coherent written form for examination in accordance with the requirements laid down by the Faculty. A candidate may obtain only one elective credit for participation in a moot competition, irrespective of the number of times a candidate participates (Students will not be eligible for supplementary or aegrotat examinations).

### Research Essay (two credits)

Final Year LLB Candidates are permitted to complete a research essay in a topic of their choice, subject to the availability of a Supervisor and the approval of the Dean. As of 2014, the paper counts for two credits. The essay should be analytical, rather than merely expository. **Students who register for the Research Essay as one of their electives must note that they will under no circumstances qualify for supplementary or aegrotat examinations, nor for oral examinations.**

Please note the following guidelines:

- The length of the essay shall be approximately 10 000 – 12 000 words (or ± 40 pages), including footnotes.
- The essay is expected to be of a standard fit for publication in an academic law journal. The general Faculty Guidelines with regard to preparation, referencing and plagiarism will apply to the essay.
- Because of the high academic standards expected of the work, and the lack of availability of supplementary and oral examinations for this elective, only students who have an average of over 60% in Penultimate year will normally be considered for registration. The Dean will consider relaxing this guideline only in exceptional circumstances, and on good cause shown.
- These guidelines refer specifically to writing up a researched paper as an elective. For those who may be in a position to write up their moot court experiences as a research paper in terms of Faculty Rule L.6, there are separate guidelines which may be obtained from the Research Essay Co-ordinator.
- The schedule for completion of the essay shall be as follows:
  - (a) The proposed topic should be discussed with the prospective Supervisor by the middle of October in the year preceding registration (i.e. when the student is still in his or her Penultimate year of study). A Pre-Registration form will have to be completed by both student and supervisor and submitted to the Research Essay Co-ordinator for the consideration of the Dean for planning purposes. The student will be required to make progress on the work during the course of the long Christmas vacation. In light of the fact that the paper counts for two credits, students who have not indicated their intention to register for a research paper by mid-October will normally not be able to register for this elective in their final year. This requirement will not apply to those who wish to register to undertake a research paper on



- their work for a moot competition approved by the Faculty in which a student has participated.
- (b) The student should, at the beginning of the final year, officially register for the elective (provided that the student still wishes to do the elective). The final decision to confirm the registration will be that of the Dean, who will do so in consultation with the Supervisor. If the registration is confirmed, the student should inform the Supervisor. The progress made over the vacation should be discussed with the Supervisor.
  - (c) A short written proposal (at least 2-3 pages long), approved by the Supervisor, should be submitted to the Research Essay Co-ordinator **by the end of the second week after registration**. The proposal should include a provisional title, and should describe the nature of the research problem to be investigated and the provisional goals of the research.
  - (d) Candidates shall meet with their supervisors on a regular basis, but at least once a month. The research essay co-ordinator shall, in addition, be entitled to call *ad hoc* meetings of all candidates for the purpose of discussing issues relating to research and research methodology, and to assess the candidates' progress.
  - (e) **At the end of the first and second terms**, candidates must submit, via their Supervisors, updates on the progress they have made with their research. Should the Research Co-ordinator consider such progress to be unsatisfactory, he or she shall place the matter before the Dean, who may, after considering any representations from the candidate and the Supervisor, withdraw the candidate's DP certificate.
  - (f) **Students will be required to present their work-in-progress orally, in seminar form, in the second week of the third term**. The seminars will be arranged by the Research Essay Co-ordinator, and are a DP requirement. Any interested persons will be entitled to attend the seminar, and to contribute to any discussion about the paper. The idea is not for the candidate to produce a "perfect" paper. Rather, the candidate can use this as an opportunity to test his or her work thus far, and to raise points of difficulty for discussion and comment. The seminar is designed to aid the candidate's research progress.
  - (g) A complete written draft of the essay shall be submitted to the Supervisor **by the last Friday of the third term**.
  - (h) The supervisor shall review the draft and return it by the end of the first week of the fourth term. If, in the opinion of the Supervisor, any revision is necessary, the candidate shall be given a further fourteen days to attend to any matters raised by the Supervisor.
  - (i) The candidate shall submit the completed essay to the Supervisor **by the third Friday of the 4th term**.
  - (j) Save in exceptional circumstances no extension of any of the time limits will be entertained.

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