



RHODES UNIVERSITY
Where leaders learn

Company Law

A



**Course Outline
2020**

**Lecturer:
Mr T Moroeng**

1. Introduction

Welcome to Company Law A. In this course you will be introduced to various kinds of juristic persons, and more specifically types of companies. Company law is largely regulated by the Companies Act 71 of 2008. This legislative text forms the basis of this course and you should familiarise yourself with its contents.

Significance of this course

This course seeks to inform, educate and engage students towards the objective of understanding the framework within which companies in South Africa, as defined in the Companies Act 71 of 2008, operate and are regulated.

How to use this document

This outline is meant to guide you through the course content and the various sources that you will work with. In order to keep track of what is discussed in class and also to plan ahead for the semester, you are expected to first read this outline at least twice, and to refer to this outline throughout the semester. You can expect to find the following in this document: course outcomes, administrative information, description of teaching methods, list of prescribed material, and integrated practise questions.

General information

	Name	Room no. and Building	Telephone no. and email address
Lecturer	Mr Moroeng	Law F6A	046 603 8432 t.moroeng@ru.ac.za
Consultation Hours	<i>Arranged via email</i>		
	Please allow the lecturer 24 hours to respond to your email with confirmation of the appointment date and time		

2. Assumptions of prior learning

Before you start this course, you must be able to:

- Write and communicate in coherent English,
- Demonstrate a thorough knowledge of the general principles of the law of contract,
- Demonstrate a working understanding of the law of agency, and the rules for statutory interpretation.
- Be capable of independent learning,
- Understand the system of judicial precedent and the important role precedent plays in our law,
- Read, analyse and extract principles from law reports and other source material,
- Apply legal problem solving techniques to practical situations.

3. Critical Outcomes

Apart from the knowledge and skills that relate directly to Company Law, the following skills are central to the study and practice of law which the course intends to enhance. By the end of this course you should be able to:

- *Identify* and *solve* practical legal problems,
- *Organise* and *manage* yourself and your work load,
- *Analyse* and *evaluate* the information conveyed during lectures and contained in the course handout,
- *Communicate* effectively in class discussions, written assignments and written examinations,
- Use academic technologies,
- Recognise problem-solving contexts in company law.

4. Specific outcomes

By the end of this course, students will be able to achieve the following outcomes:

- Critically analyse the meaning, scope and extent of separate legal personality,
- Identify, distinguish and characterise the different forms of companies,
- Provide a factual and theoretical understanding of the rights, duties, obligations and liabilities of the stakeholders in a corporate environment
- Understand internal regulatory oversight.
- Identify and systematically apply statutory provisions to determine subsidiary relationships,
- Appreciate and simulate the legal political social and cultural factors that are likely to significantly affect the South African corporate environment.
- Appreciate the corporate social responsibility of companies and their role in promoting social justice.
- Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises,
- Critically analyse, explain and apply the various remedies provided in the Companies Act 71 of 2008 for the protection of minority interests,
- Advise an ordinary person regarding the legal rules that apply for the incorporation of a company in terms of the Companies Act 71 of 2008.

5. Teaching methods and learning responsibility of students

This course aims to analyse and critique the law in its present state and consider the imminent changes to this area of law. To this end:

- A combination of formal lecturing and class discussions will be conducted.
- Formal lecturing will be facilitated through a case study method. To this end, appropriate cases and the narratives of a legal dilemma will be the basis of lectures and class discussion.
- All lecture materials (*excluding* power point presentations) will be placed on RUConnected well in advance to free up time for class discussions.
- Students are expected to take responsibility for their own learning by reading and preparing the course material provided.
- Students are encouraged to voice their opinions in class and in assessments in order to illustrate how critically they have reflected and engaged with the relevant legal principles.
- The required reading for the entire course is part of this course outline.

6. Student assessment

<p>SPECIFIC OUTCOMES</p> <p><u>On completion of this course, you should be able to:</u></p>	<p>ASSESSMENT CRITERIA</p> <p>(What evidence must you provide to show that you are competent?)</p> <p><u>You must be able to:</u></p>	<p>ASSESSMENT TASKS</p> <p><u>The evidence will be gathered in:</u></p>
<ul style="list-style-type: none"> Identify the different theories of incorporation to provide a crucial context in which students will appreciate how concepts and principles of company law in south Africa are shaped by different objectives. 	<ul style="list-style-type: none"> Apply statutory and common law principles. Identify critical aspects of case law. Demonstrate an understanding of the concepts and principles contained in the case law and statutes. 	<ul style="list-style-type: none"> -Class discussions -Class assignments -Test -Examination
<ul style="list-style-type: none"> Identify, distinguish and characterise the different forms of companies. 	<ul style="list-style-type: none"> Describe and explain various companies. Discuss the advantages and disadvantages of each company. Identify the relevant legislative provisions. Identify critical aspects of case law regarding each company. 	<ul style="list-style-type: none"> -Class discussions -Class assignments -Test -Examination
<p>Provide a factual and theoretical understanding of the rights, duties, obligations and liabilities of the stakeholders in a corporate environment</p>	<ul style="list-style-type: none"> Identify different stakeholders in a company Describe the rights, duties, obligations and liabilities of stakeholders. Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of stakeholders. 	<ul style="list-style-type: none"> -Class discussions -Class assignments -Test -Examination

	<ul style="list-style-type: none"> ▪ Understand the impact of majority rule & protection of minority interests in a company. ▪ Appreciate the rules for the management of companies. ▪ Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations. 	
<ul style="list-style-type: none"> • Understand internal regulatory oversight 	<ul style="list-style-type: none"> • Identify the nature and extent of powers of auditors. 	<ul style="list-style-type: none"> -Class discussions -Class assignments -Test -Examination
<ul style="list-style-type: none"> • Appreciate and simulate the legal political social and cultural factors that are likely to significantly affect the South African corporate environment. 	<ul style="list-style-type: none"> • Describe and predict some of these factors such as: • the nature and extent of corporate governance codes; • South Africa's economic hegemony in Africa; and • the evolving recognition of companies as subjects of international law 	<ul style="list-style-type: none"> -Class discussions -Class assignments -Test -Examination
<ul style="list-style-type: none"> • Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises 	<ul style="list-style-type: none"> • 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 and the legal remedies that might flow from the finding. 	<ul style="list-style-type: none"> -Test -Examination

7. Assessment strategy

You will be assessed by means of three (3) tasks and an examination to be written in June. You are encouraged to make proper use of all these assessment opportunities as each will contribute to your final mark. Do not be fooled by the tasks that weigh the least – these may very well be the tasks that could boost your marks if you find yourself in a border line situation in June. Please consult RUconnected, the notice board and website of the faculty for relevant dates.

Assessment task	Weighting	Purpose of task
Prior Knowledge Test (PKT)	5%	To refresh your memory on content relating to the assumptions of prior learning stated earlier in this document
Assignment	10%	To evaluate whether you are able to critically analyse and apply the provisions of the Companies Act 71 of 2008
Semester Test	15%	To assess student learning and ability to solve legal problems through application of the relevant legal rules

Semester mark	30%
Exam	70%
TOTAL	100%

8. DP certificate

Attendance of lectures is compulsory and a register will be taken during each lecture. It is accepted that 100% class attendance is generally not attainable; however, students may miss no more than six (6) lectures for this course. Students are responsible for collecting, retaining and presenting all relevant documents (doctor's letters etc) in respect of the lectures and assessments missed and filling out the necessary LOA form. LOA forms must be submitted within five (5) working days of the lecture or assessment which you missed. Failure to do so may result in your LOA application being denied.

A schedule of lectures is available on RUconnected to help you keep track of the sessions.

Please be reminded that signing for another student constitutes fraud and any student caught doing so will be prosecuted in terms of the student disciplinary code.

9. Study Material

A number of study material can be used to broaden and sharpen your understanding of company law. The following are prescribed and recommended sources. Under each theme, The “*Companies and other Business Structures in South Africa*” by Davis *et al* is the prescribed book that **must** be covered for in preparation for lectures. Some themes may prescribe Chapters from other recommended textbooks. For these particular Chapters, the recommended textbooks **must** be covered in preparation for lectures. Save for when it is expressly stated, the recommended textbooks for the theme *may* be covered to broaden your understanding.

You will require the following for completion of this course:

- a. Companies Act 71 of 2008
- b. *Prescribed: Davis et al, Companies and other Business Structures in South Africa* 3rd edition (2019) Oxford University Press: Cape Town
- c. *Recommended: Cassim et al, Contemporary Company Law* 2nd edition (2012) Juta: Claremont
- d. *Recommended: Cassim et al, The Law of Business Structures* (2012) Juta: Claremont
- e. King IV: Report on Corporate Governance in South Africa (2016)
- f. Useful links:

Independent Institute of Directors of Southern Africa	www.iodsa.co.za
Companies Intellectual Property Commission	www.cipc.co.za
Financial Services Board	www.fsb.co.za
Johannesburg Securities Exchange	www.jse.co.za

PLEASE BE ADVISED THAT THE PRESCRIBED MATERIAL IS SUBJECT TO CHANGE, AS IS THE LAW, AND THAT I RESERVE THE RIGHT TO ADD/REPLACE STUDY MATERIAL DURING THE COURSE OF THE SEMESTER.

ANNOUNCEMENTS IN THIS RESPECT WILL BE MADE DURING CLASS / ON RUCONNECTED AND STUDENTS ARE EXPECTED TO REMAIN UP TO DATE.

10. Course Content

Theme 1: Introduction to South African company law and the concept of separate legal personality

Purpose of the theme:

The scope of application of various sources of company law will be discussed in this theme. This will be done with a view to ensure that students understand the most important principle of company law, which is separate legal personality.

Some key terms will come up quite often during the lectures. You are advised to familiarise yourself with these concepts. Listed below are some of the most important terms that you must understand. Ideally, you should use section 1 of the Companies Act 71 of 2008 throughout the entire course. For starters, look for the following words in section 1 of the Companies Act 71 of 2008 and study the meanings thereof:

- alterable provision
- company
- debenture
- director
- general voting rights
- juristic person
- memorandum of incorporation
- ordinary resolution
- securities
- share
- shareholder
- shareholders meetings
- special resolution
- unalterable provision
- voting rights
- voting securities

Sources of reference:

- s1; s5; s20(9) of the Companies Act 71 of 2008
- *Prescribed:* Chapters 1 & 2.1 – 2.4 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Recommended:* Chapters 1 & 4 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapter 2 in Cassim *et al*, *Contemporary Company Law* (2012)

Case law

- *Salomon v Salomon & Co Ltd* [1897] AC 22 (HC)
- *Dadoo Ltd v Krugersdorp Municipal Council* 1920 AD 530
- *Robinson v Randfontein Estates Gold Mining Co* 1921 AD 168
- *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd* 1995 (4) SA 790 (A)
- *Le'Bergo Fashions CC v Lee* 1998 (2) SA 608 (C)
- *Hülse-Reutter v Godde* 2001 (4) SA 1336 (SCA)
- *Ex Parte Gore* 2013 (3) SA 382 (WCC)
- *City Capital SA Property Holdings Ltd v Chavonnes Badenhorst St Clair Cooper NO* (85/2017) [2017] ZASCA 177 (1 December 2017)

Journal articles

- Rehana Cassim 'Piercing the veil under s 20(9) of the Companies Act 71 of 2008: A new director' (2014) 26(2) *South African Mercantile Law Journal* 307 – 337.

Theme 2: Types of business structures and groups of companies

Purpose of the theme:

In this section you will compare and contrast the different types of companies and other business structures such as a sole proprietorship and close corporations. You will also learn how to determine when a person is said to have *control* in a company.

Sources of reference:

- s1, s2, s3, s8 of the Companies Act 71 of 2008
- *Prescribed:* Chapters 2.5 & 3 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Recommended:* Chapter 5 & 8 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapters 3 & 6 in Cassim *et al*, *Contemporary Company Law* (2012)

Case law

- *Cuninghame v First Ready Development 249* (association incorporated under section 21) 2010 (5) SA 325 (SCA)

Journal articles

- Maleka Femida Cassim 'The Contours of Profit-Making Activities of Non-Profit Companies: An Analysis of the new South African Companies Act' (2012) 56(2) *Journal of African Law* 243 – 267.
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Theme 3: Formation of companies and company constitution

Purpose of the theme:

In this section you will learn the criteria for the incorporation of a company and the legal rules that apply to company names. You will also be exposed to various examples of relevant company documents such as a memorandum of incorporation, notice of incorporation, and company rules.

Sources of reference:

- s11, s12, s14, s15, s16, s21, s160 of the Companies Act 71 of 2008
- *Prescribed:* Chapters 2.9–2.12 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Recommended:* Chapter 6 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapter 4 in Cassim *et al*, *Contemporary Company Law* (2012)

Case law

- *Venalex (Pty) Limited v Vighraha Property CC and others* [2015] JOL 33169 (KZD)
 - *Richard Du Plessis Barry v Clearwater Estates NPC & others* (187/2016) [2017] ZASCA 11 (16 March 2017)
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Theme 4: Corporate capacity, authority and liability

Purpose of the theme:

In this section you will distinguish between the concepts of capacity and authority. You will be introduced to the powers and the capacity that a company possesses, while also critically engaging with the legal principles of agency and representation in a company.

Sources of reference:

- s19, s20, s66 of the Companies Act 71 of 2008
- *Prescribed:* Chapter 5 in Cassim *et al*, Contemporary Company Law (2012)
- *Recommended:* Chapter 7 in Cassim *et al*, *The Law of Business Structures* (2012)

Case law

- *Royal British Bank v Turquand* (1856) 119 ER 886
- *One Stop Financial Services (Pty) Ltd v Neffensaam Ontwikkelings (Pty) Ltd and Another* 2015 (4) SA 623 (WCC)
- *Recommended: Makate v Vodacom (Pty) Ltd* [2016] ZACC 13

Journal articles

FHI Cassim & MF Cassim “The authority of company representatives and the Turquand rule revisited” (2017) 134(3) *SALJ* 639.

Theme 5: Share capital, shareholders meetings and resolutions

Purpose of the theme:

This section will help you learn how to identify shares and different classes of shares. You will also go through the legal rules that apply for the convening of shareholders' meetings and resolutions.

Sources of reference:

- s1; s4; s46; s57-65 of the Companies Act 71 of 2008
- *Prescribed:* Chapters 4; 5 & 8 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Recommended:* Chapter 9, par 10.2 & chapter 11 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapter 7 & 9 in Cassim *et al*, *Contemporary Company Law* (2012)

Case law

- *Richard Du Plessis Barry v Clearwater Estates NPC & Others* (187/2016) [2017] ZASCA 11 (16 March 2017)
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Theme 6: The Board of Directors and Directors' Duties

Purpose of the theme:

This section of company law is very important. In this theme you will learn about the fiduciary relationship that exists between directors, the company and its shareholders. The theme entails an overview of appointment and dismissal of directors as well the legal rules for the constitution of board meetings. In this section you will also embark on an in-depth analysis of the duties that directors owe towards the company, what constitutes a breach of these duties and which remedies can be used to hold directors liable for non-compliance with their duties.

Sources of reference:

- s66-78 of the Companies Act 71 of 2008
- *Prescribed:* Chapter 6 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Recommended:* Chapter 12 & 14 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapters 10 & 12 in Cassim *et al*, *Contemporary Company Law* (2012)

Case law

- *Kaimowitz v Delahunt and others* 2017 (3) SA 201 (WCC)
- *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134
- *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168
- *Cook v Deeks* [1916] 1 AC 554 (PC)
- *Industrial Developments Consultants Ltd v Cooley* [1972] 2 All ER 162

Journal articles

- R Stevens " The Legal Nature of the Duty of Care and Skill: Contract or Delict?"
PER / PELJ 2017(20)
-

Theme 7: Protection of minority interests and remedies

Purpose of the theme:

In this section you will learn about the pitfalls of the majority rule. You will also learn about the various remedies that are aimed at the protection of minority interests as provided in the Companies Act 71 of 2008. You will also be expected to engage with the opinions of various legal scholars in order to critically reflect on the effectiveness of these statutory remedies.

Sources of reference:

- s 20(5), (6) & (9); s161; s162; s163; s164; s165 of the Companies Act 71 of 2008
- *Prescribed:* Chapter 14 in Davis *et al*, *Companies and Other Business Structures* (2019)
- *Prescribed:* Chapter 18 in Cassim *et al*, *The Law of Business Structures* (2012)
- *Recommended:* Chapter 16 in Cassim *et al*, *Contemporary Company Law* (2012)
- *Recommended:* MF Cassim *The new derivative action under the Companies Act: Guidelines for judicial discretion* (2016) Juta: Claremont

Case law

- *Foss v Harbottle* (1843) 67 ER 189
- *Visser Sitrus (Pty) Ltd v Goede Hoop Sitrus (Pty) Ltd and Others* 2014 (5) SA 179 (WCC)
- *Giwhala & Others v Grancy Property Ltd and Others* [2016] 2 All SA 649 (SCA)
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Journal articles

- M. Lehloenya & T Kgarabjang “Defining the limits of the ‘Oppression Remedy’ in the wake of section 163 of the Companies Act 71 of 2008 – *Grancy Properties Limited v Manala* [2013] 3 All SA 111 (SCA)” 36 *Obiter* 511
 - MF Cassim “When companies are harmed by their own directors: The defects in the statutory derivative action and the cures Part 1” (2013) 25 *SA Merc LJ* 168.
 - MF Cassim “When companies are harmed by their own directors: The defects in the statutory derivative action and the cures Part 2” (2013) 25 *SA Merc LJ* 301.
 - R Cassim “Delinquent directors under the Companies Act 71 of 2008: *Giwhala & Others v Grancy Property Limited* 2016 ZASCA 35” 2016 (19) *PELJ* 1-28.
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Theme 8: King IV: Report on Corporate Governance in South Africa

Purpose of the theme:

This section will briefly introduce the principles of corporate governance of South Africa, as contained in the King Code IV report published in 2016.

Sources of reference:

- King IV: Report on Corporate Governance for South Africa – 2016
Author: Ansie Ramalho / King IV Project Lead, Institute of Directors in Southern Africa

This item can be found on the LexisNexis library under the 'Corporate and Commercial' tab.

The screenshot displays the LexisNexis library interface. The top navigation bar includes 'Library' and 'Practical Guidance' tabs. The main content area is divided into 'Research Areas' and 'Publications'. Under 'Publications', the 'King IV: Report on Corporate Governance for South Africa - 2016' is listed under the 'Corporate and Commercial' category. A large black arrow points from the text above to this specific document in the list. The document's title is circled in black. To the right, the 'Contents' section is visible, listing various parts of the report, including 'Part 1' through 'Part 7'. The footer of the page shows the LexisNexis logo, 'Privacy Policy | T&Cs | Copyright © 2019 LexisNexis', and the RELX Group logo with a 'Chat With Us' button.

11. Student Feedback / Course evaluation

How students experience the course, the lecturer's approach to the course and assessments tasks is an important part of teaching and learning. As a result, students will be required to participate in a course evaluation at the end of the semester. The purpose of this evaluation is to give students a platform to express and reflect on how they experience the course as a whole and provide suggestions for improvement. Students will be requested to complete an evaluation questionnaire in which they will reflect and comment on the course and reflect on how they have experienced the course. Students are highly encouraged to use this platform to express their concerns, challenges and even suggest possible ways in which the course can improve.

Last updated: January 2020

'I wish you all the best and the greatest success in completing this course.'
N Mashinini