



RHODES UNIVERSITY
Where leaders learn

Faculty of Law
Legal Interpretation

Course Outline 2021

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INTRODUCTION

Purpose of the course

South African has a mixed legal system with multiple sources of law. Sources for judicial decision-making and those that lay the foundation for law and order are the Constitution, followed by statutory law, common law, customary law; as well as court precedent, international, and foreign law. Legal Interpretation is therefore the juridical understanding of legislation, case law and the rules and principles to construct meaning for judicial purposes.

This course aims to develop your critical thinking skills while equipping you with the ability to:

- Read and work with case law
- Understand and explain judicial precedent
- Interpret the meaning of legislative provisions by applying the rules of statutory interpretation
- Understand and explain constitutional interpretation
- Deconstruct and explain legal reasoning

- Write clear and concise legal arguments

Assumptions of Prior Learning

The lecturer in this course assumes that you are able to:

- Find cases and legislation
- Recognise, identify and solve legal problems
- Communicate effectively in English (written and spoken)
- Conduct in-depth research and comply with conventions of ethical referencing
- Take charge of your own studies and organise your time accordingly

COURSE OBJECTIVES/ LEARNING OUTCOMES

By the end of the course you are expected to:

- Understand and explain the doctrine of judicial precedent
- Distinguish between findings of fact and law
- Distinguish between *rationes decidendi* and *obiter dicta*
- Explain the application of the Constitution and legislation as sources of legal authority
- Distinguish between the various rules and approaches to statutory interpretation
- Organise and manage your time and resources effectively

The specific outcomes for each section/topic of the work are outlined in the reading list.

TEACHING METHODS

The principal modes of teaching and learning in this course is online learning and self-study. Students are expected to engage the course material thoroughly and to enquire from the lecturer where uncertainties/lack of understanding arise.

Self-Study: Certain portions of the course maybe designated for self-study. This means you are responsible for reading and understanding the material in these sections because these may be assessed in the form of an assignment, test or in the final examination. It is therefore your prerogative to approach the me for clarity if you experience difficulty with concepts in the self-study sections.

Everyone is urged to prepare adequately for lectures and tutorials. Where necessary i will supplement course materials with illustrations and explanatory summaries.

Tutorials: The tutorials are primarily aimed at assisting in having a firmer grasp of the course content as well as with tackling and solving legal problems. Tutorials require active participation and students are thus expected to attempt to generate a solution(s) for the tutorial problem(s). Submission of tutorial answers is compulsory. Students are strongly encouraged to make use of this platform to enhance their legal interpretation skills.

RESOURCES FOR THE COURSE

The prescribed textbook for this course is: Christo Botha *Statutory Interpretation: An Introduction for Students* 5th ed (2005) (Juta) It is recommended that you also consult the following:

L.M. du Plessis *The Re-interpretation of statutes* (2002) (Butterworths)

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

G.E. Devenish *The Interpretation of Statutes* (1992) (Juta)

E.A. Kellaway *Principles of Legal Interpretation* (1995) (Butterworths)

Additional course material is available on our electronic learning platform *RU Connected*. The enrolment key will be issued to you during the first lecture.

ASSESSMENTS

Your competence will be assessed at a number of points during the semester.

1. Class Test (20%) - TBC

The test will account for 20% of your final mark. You will be tested on all the work covered in the first term. The questions in this test may take the form of theory and/or problem-type question. The aim is to assess your knowledge of the rules and principles relating to legal interpretation and your ability to solve legal problems using legal reasoning.

2. Research Assignment (20%)- TBC

The assignment is aimed at assessing your ability to conduct in-depth research and the utilization of e-learning legal resources. You will be expected to provide a cogent and sound legal opinion/advice. You will also be assessed on your ability to comply with conventions of ethical referencing. Overall, the task aims at gauging whether you are able to organise and manage your time and resources effectively.

3. Tutorials (10%)

As stated above, the tutorials are primarily aimed at assisting in having a firmer grasp of the course content as well as with tackling and solving legal problems. Tutorials require active participation and dedication on your part.

4. Closed Book Examination June/July (Summative Assessment) (50%)

The exam will be written during the June/July examination cycle and will account for 50% of your final mark. It will cover everything taught in the first semester. Similarly, to the tests, questions in the exam may take the form of theory and/or problem-type question.

Schedule

Topic 1

Administration and introduction

Topic 2

Judicial Precedent

Topic 3

Purpose of legislation and process of interpretation

Topic 4

Commencement of legislation and the new Constitutional order

Topic 5

Constitutional interpretation and ordinary statutory interpretation

Topic 6

The lawmaking function of the courts

Topic 7

Delegated legislation

Topic 8

Modification of meaning

Topic 9

Reading Down, Reading up, Reading in and Severance

Topic 10

The Orthodox Text-Based (Literal) (Intentionalist) Approach
The Purpose (Text-in-Context) Approach

Topic 11

Peremptory and Directory Provisions

Topic 12

Amendment and Demise of legislation
