

COMMERCIAL LAW 201: PAPER 1

THE LAW OF SALE, LEASE, INSURANCE & CARRIAGE

2022



Course coordinator: Dr N Mashinini
Email: n.mashinini@ru.ac.za

SECTION A: COMMERCIAL LAW 2 GENERAL INFORMATION

Welcome to Commercial Law 2! The information in this hand-out has been compiled to assist you. Please read it carefully to ensure that you are familiar with the contents.

1. COL 201 and COL 202 are separate courses, each of which gives a student a one semester credit towards a degree. A credit in one course is not contingent upon passing or registering for the other course.
2. COL 201 is taught and examined in the first semester and COL 202 is taught and examined in the second semester.
3. A student will obtain a credit for Commercial Law 2 according to the following rules:
 - 3.1 A credit will be given if a student has passed both courses irrespective of the year or examination in which they were passed.
 - 3.2 An aggregated credit (ACR) will be given if a student has an aggregated mark of at least 50% for both courses (i.e. COL 201 and COL 202) and has obtained at least 45% in the course failed.
 - 3.3 Aggregation may only take place in respect of examinations written in the same academic year.**
4. COL 201 consists of two papers.
 - a. Paper 1 covers Special Contracts: sale, lease, carriage and insurance.
 - b. Paper 2 covers Labour Law, Real and Personal Security, Banking Law and Payment Instruments.
 - c. If a student does not obtain a final mark above 50% for COL 201, the student must re-write both papers for COL 201. The same rules apply to COL 202.
5. The course coordinator for COL 201 and COL 202 is Dr Mashinini and she can be contacted at n.mashinini@ru.ac.za. Any problems of an administrative nature should be directed to her while queries regarding the content of the course should be directed to the relevant lecturer.

6. It is recommended that students join the RUConnected pages for this course (COL 201 and COL 202). These pages will be used as the primary mode of communication with the class. Students will be provided with course materials and they will be directed to any further reading during lectures through RUconnected. Additional sources of information will be posted on RUConnected.
7. Two one-hour exams will be written in June/July 2022 and two in November 2022 i.e. one examination each for Papers 1 and 2 in June/July and November.
8. The class mark component of COL 201 and COL 202 amount to 50% of the final mark. COL 201 will be examined in June 2022 and COL 202 will be examined in November 2022. The marks for Papers 1 and 2 will be added together and reduced to a mark out of 50. The remaining 50 marks will be calculated on the basis of the tests written during the relevant semester.
9. Students who fail COL 201 or COL 202 may be granted supplementary examinations provided that they obtain at least 40%.
10. There will be six continuous assessments in the form of short quizzes for both COL 201 and COL 202 (i.e. three tests for Com Law 201 and three tests for Com Law 202).

IT IS A DP REQUIREMENT FOR STUDENTS TO WRITE THE TESTS AND YOU WILL ONLY BE EXCUSED IF YOU HAVE A VALID LEAVE OF ABSENCE.

STUDENTS ARE REQUIRED TO IDENTIFY THEMSELVES AT TEST BY PRODUCING A VALID STUDENT CARD OR SOME FORM OF PHOTOGRAPHIC ID.

The marks obtained for the tests will count 50% towards the final mark for COL 201 and COL 202 and so it is in students' interests to take them seriously. The test dates, times and venues are reflected in the course outlines for each module.

11. More information regarding the duration, marks and structure of each assessment will be sent to students by the relevant lecturer.

SECTION B: COMMERCIAL LAW 201 PAPER 1 COURSE OUTLINE

1. INTRODUCTION

Welcome to Commercial Law 201, Paper 1 in 2022. This outline contains general information regarding Paper 1 and includes the four modules for this course, namely:

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

1.1 Overview

The law of sale, lease, insurance 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 201, paper 2). Approximately 70% of the course is dedicated to the law of sale and lease in equal measure, with carriage and insurance taking up the remainder of course.

In general, the course aims to provide insight into the nature and function of the law of sale, lease, insurance 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, insurance 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, insurance or lease relationship and how situations are dealt with by the law.

1.2 Credit Value

The course contains 7.5 Credits which amounts to 7.5 hours to be spent on this course per week.

1.3 Assumptions of Prior Learning

In order to successfully 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 workload.
- 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, insurance and carriage.
- To understand and explain some of the key legal consequences of entering into a contract of sale, lease, insurance 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.

3. TEACHING METHODS

Commercial Law 202 Paper 1 consists of three different sections, namely, the law of sale, the law of lease, the law of carriage and the law of insurance. 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 recorded PowerPoint presentations 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. 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 assessments.

4. ASSESSMENT

There will be three formal tests for Commercial Law 201: Paper 1 which will make up the course's class work component.

Test 1: 4 March 2022

Test 2: 18 March 2022

Test 3: 1 April 2022

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.

The content of this course will be examined in June 2022. More information on the structure of the examination will be made available closer to the examination date.

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

5. 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 – Carriage and the Law of Carriage defined

Section 2 – The contract of carriage in Roman Law

Section 3 – Duties of the parties

Section 4 – Liability

Section 5 - Legislation

INSURANCE LAW

Section 1 - Insurance and Insurance Law defined

Section 2 - Concluding contracts of insurance

Section 3 - Rights and duties of the insurer

Section 4 - Rights and duties of the insured

Section 5 - Ending a contract of insurance

6. RESOURCES

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) and some more specific textbooks as well. You will also need to consult legislation from time to time. Legislation can be accessed on the internet via the Rhodes library webpage. Click on the Netlaw database on the electronic information resources library site.

1. S Kopel *Guide to Business Law* 6th ed (2017) Cape Town: Oxford University Press
2. J Scott & S Cornelius (eds) *The Law of Commerce in South Africa* 2nd ed (2015) Cape Town: Oxford University Press
3. A Govindjee *et al*, *Commercial Law: Fresh Perspectives* 3ed (2019) Cape Town: Pearson
4. G Glover *Kerr's The Law of Sale and Lease* 4th ed (2014) Durban: LexisNexis

OVERVIEW OF COL 2

