

FACULTY OF LAW
RHODES UNIVERSITY

**COMMERCIAL LAW 202
PAPER 2**

INSURANCE LAW,
COMPETITION LAW,
ALTERNATIVE DISPUTE
RESOLUTION, AND
BUSINESS ETHICS

2015

Lecturers:

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1. INTRODUCTION

1.1. Overview

Commercial Law 202, Paper 2 is a component course of Commercial Law 202. Upon completion of the course, students should have a broad overview of the legal principles of insurance law, competition law, alternative dispute resolution and business ethics, and will be able to apply these principles in the commercial or accounting professions.

1.2. Credit Value

7.5 credits, which translates into 7.5 hours to be spent on this course per week. There are two 45-minute lectures per week.

1.3. Assumptions of Prior Learning

It is assumed that students:

- have a basic working knowledge of the South African legal system, the hierarchy of the Courts and legal terminology;
- are capable of independent work;
- are capable of communicating in written and spoken English;
- are able to identify and apply legal principles to a set of facts;
- are capable of solving problems.

2. OUTCOMES

It is intended that students will be able to do the following on successful completion of the course:

- (a) Identify the essential elements and special terms of insurance contracts.
- (b) Explain key concepts relating to insurance contracts and claims.
- (c) Assess the merits of an insurance claim given certain facts and contractual terms.
- (d) Understand the essential tenets of ethical business norms and internal structures that promote ethical business practice.
- (e) Demonstrate an ability to distinguish ethical from unethical business practices.
- (f) Demonstrate knowledge of the objectives and rationale for the regulation of competition.
- (g) Identify examples of restrictive practices and the abuse of market dominance.
- (h) Understand the functions of the Competition Commission, Competition Tribunal and Competition Appeal Court.
- (i) Demonstrate knowledge of the competition authorities' powers of investigation and enforcement, and penalties which may be imposed on companies.
- (j) Demonstrate a working knowledge of negotiation, mediation and arbitration principles, process and strategies.
- (k) Identify disputes that should appropriately be referred to negotiation, mediation or arbitration.

3. TEACHING METHOD

Lectures will be delivered in a semi-socratic style, using practical questions and real-life examples as a basis for explaining concepts. Students are expected to assume responsibility for their learning by reading ahead before the lecture and consolidating afterwards. The extent of learning and

knowledge at the end of the course will depend on the effort students put into the course.

4. ASSESSMENT

The two-hour November examination will count 70%, and the two tests will count 30% towards the final mark. For further detail regarding assessment see the Commercial Law 202 2014 General Information handout.

5. CONTENT

1.1. Insurance Law

(approximately weeks 1-4)

- The relevance and function of insurance
- Definitions
- Sources of insurance law
- Different types of insurance
- Essential elements of insurance contracts
- Conclusion of insurance contracts
- Insurable interest
- Duty of disclosure
- Warranties
- Other special terms in insurance contracts
- Insurance claims
- Termination of insurance contracts

1.2. Business ethics

(approximately week 5)

- The application of moral or ethical norms to business practice.
- Business ethics as an academic field of study.
- Internal structures that promote business ethics.

1.3. Competition Law

(approximately weeks 6-9)

- The objects of, and rationale for, competition law.
- Regulation of competition.
- Restrictive horizontal practices.
- Restrictive vertical practices.
- The abuse of dominance.
- The impact of mergers on competition.

1.4. Alternative Dispute Resolution

(approximately weeks 10-13)

- An overview of negotiation, mediation and arbitration as alternatives to court litigation
- Negotiation strategies, process, tactics and ethics
- Mediation and the mediator: goals, principles, skills and ethics
- Various aspects of the Arbitration Act of 1965
- The arbitrator: appointment, duties and functions
- The proceedings of an arbitration tribunal, and the arbitration award

6. EVALUATION

This course will be reviewed and updated by lecturers on an annual basis. Evaluation of the course will take place in accordance with the evaluation policy set up by the Faculty. Students are also invited to discuss their difficulties and problems with the course with the relevant lecturer, either personally or through their student representative.

7. RESOURCES

Johan Scott et al *The Law of Commerce in South Africa* (2009) Oxford University Press Southern Africa: Cape Town.

Shawn Kopel *Guide to Business Law* 5 ed (2012) Oxford University Press Southern Africa: Cape Town.

M Brassey et al *Competition Law* (2002) Juta Law: Claremont.

A. Govindjee et al *Commercial Law 2: Fresh Perspectives* (2007) Pearson Cape Town Prentice Hall.