



**RHODES UNIVERSITY**  
*Where leaders learn*

Faculty of Law

Legal Interpretation

Course Outline 2018

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## **INTRODUCTION**

### **Purpose of the course**

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 Ober 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 two principal modes of teaching and learning in this course are lectures and tutorials.

**Lectures:** Lectures are participatory in nature and you may be called upon to comment on the prescribed readings. Students are therefore expected to prepare adequately for lectures and tutorials. Where necessary the lecturer 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 attend having already attempted to generate a solution(s) for the tutorial problem(s).

Attendance and the submission of tutorial answers are compulsory. Students are strongly encouraged to make use of this platform to enhance their legal interpretation skills. A register will be taken during tutorials for DP purposes.

NB: Students will not be granted DP certificates if they miss more than two tutorials and/or if they fail to submit tutorial answers. If a student misses tutorials due to a valid reason they must complete and submit a Leave of Absence form along with supporting documents which serve as proof of the reason for absence. Refer to the Survival Guide for more information regarding DP requirements.

## **RESOURCES FOR THE COURSE**

### **Prescribed Text:**

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

### **Recommended:**

Christo Botha *Statutory Interpretation: An Introduction for Students* 5<sup>th</sup> ed (2005) (Juta)

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)

## **ASSESSMENTS**

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

### **1. Group Research and Problem Solving Assignment (10%) - TBC**

In the workplace some of the critical attributes that an employee must have (particularly legal practitioners) are good research, written and verbal communications skills. In addition to this analytical ability, flexibility, logical thinking and most importantly, being a team spirit are valued. More often than not you will have to work in pairs or a team to achieve a particular objective. This not only enhances your interpersonal skills but also equips you with the ability to take collective responsibility and provides you with a platform for the exchange of a vast array of ideas and solutions to complex problems. This exercise is aimed at developing and honing these critical skills set. Moreover, you will also be assessed on your ability to conduct legal research and provide innovative and effective solutions to legal problems.

### **2. Online Quiz –Term 1 (5%) -TBC**

The purpose of the online quiz is to integrate the use of information technology in your learning process. You will therefore be expected to demonstrate your familiarity with and the ability to use e-learning and research platforms such as LexisNexis-Butterworths, Jutastat, Sabinet Legal and other e-resources. Most importantly the tasks are aimed at testing your ability to find, read and interpret cases and legislation with a limited form of application. More details pertaining to the exercise will be communicated in class.

### **3. Class Test – (10%)-TBC**

The test will account for 10% 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.

### **4. Tutorials (5%)**

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.

**5. Closed Book Examination Oct/Nov (Summative Assessment) (70%)**

The exam will be written during the June/July examination cycle and will account for 70% 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**

| <b>WEEK</b>                 | <b>DATE</b>  | <b>TOPIC</b>                     | <b>ASSESSMENTS</b> |
|-----------------------------|--------------|----------------------------------|--------------------|
| 1                           | 12-16 Feb    | Introduction                     |                    |
| 2                           | 19- 23 Feb   | Judicial Precedent (1)           |                    |
| 3                           | 26 -02 March | Judicial Precedent (2)           |                    |
| 4                           | 05-09 March  | Legislation and the Constitution |                    |
| 5                           | 12-16 March  | Conflict                         | Online Quiz        |
| 6                           | 19-23 March  | Revision/Tutorial Exercises      |                    |
| <b>STUDY BREAK</b>          |              |                                  |                    |
| 7                           | 09-13 April  | Approaches to Interpretation     | Assignment         |
| 8                           | 16-20April   | Rules of Construction            |                    |
| 9                           | 23-27 April  | Presumptions                     |                    |
| 10                          | 30-04April   | Amendment & demise               |                    |
| 11                          | 7-11 May     | Constitutional interpretation    | Semester Test      |
| 12                          | 14-18 May    | Common Law                       |                    |
| 13                          | 21-25 May    | Revision & Test Prep             |                    |
| <b>SWOT WEEK&amp; EXAMS</b> |              |                                  |                    |

## **COURSE CONTENT**

Below is an overview of the topics to be covered in this course.

### **Topics**

1. Introduction
2. Judicial Precedent
  - The Doctrine of Precedent
  - Rules of Precedent
  - Findings of Fact and Law
  - Rationes Decidendi and Obiter Dicta

### **Prescribed Cases**

- *Camps Bay Ratepayers and Residents Association and Another v Harrison and Another* 2011 (2) BCLR 121 (CC)
- *Makhanya v University of Zululand* [2009] 4 All SA 146 (SCA)
- *Walele v City of Cape Town and Others* 2008 (6) SA 129 (CC)
- *True Motives 84 (Pty) Ltd v Mahdi and Another (Ethekwini Municipality as Amicus Curiae)* 2009 (7) BCLR 712 (2009 (4) SA 153 (SCA)

### 3 Statutory Interpretation

- Legislation and the Constitution
- Characteristics of Legislation
- Original and Delegated Legislation
- Conflict between Legislation
- The Need for Interpretation
- Approaches to Interpretation
- Rules of Construction and Presumptions

### **Prescribed Reading**

- Christo Botha *Statutory Interpretation: An Introduction for Students* 5th ed (2005) Chapter 1 (3-33)
- L.M. du Plessis *The Re-interpretation of statutes* (2002) Chapter 2 (19-24), Chapter 3 (25-44); Chapter 7 (133-148)

## Presumptions

In this section we cover the presumptions that are sometimes used by the courts to interpret legislation. We are going to consider the common law presumptions that have been subsumed by the Constitution as well as those that have not been affected by it.

### Prescribed Reading

- Christo Botha Statutory Interpretation: An Introduction for Students 5th ed (2005) Chapter 3 (55-62), Chapter 4 (78-79), Chapter 6 (133-142) & Chapter 8 (179-180)
- L.M. du Plessis The Re-interpretation of statutes (2002) Chapter 8 (149-194)

#### 4. The Constitution and the Common Law

##### a) Constitutional Interpretation

- Christo Botha Statutory Interpretation: An Introduction for Students 5th ed (2005) Pages 195-204
- *Govender of Minister of Safety and Security* (2001) 4 SA 273 (SCA)

##### b) Common Law

- Eduard Kleyn & Frans Viljoen *Beginner's Guide for Law Students 3<sup>rd</sup> ed* (2010) 80-86
- *Van Breda and Others v Jacobs and Others* 1921 AD 330