

# **LAW OF CONTRACT A – 2018**

## **1. INTRODUCTION**

### **Overview**

The Law of Contract A is a self-standing semester course that counts as a credit in the Faculty of Law in the LLB2, as well as comprising one of the six component courses in the Legal Theory 3 major in the undergraduate degrees offered by the Faculties of Humanities, Science and Commerce. Students who pass the Law of Contract A as part of the Legal Theory major are exempted from the course in the LLB curriculum.

The purpose of the course is to provide insight into the nature and function of the law of contract in South Africa. More particularly:

- To provide the students with an understanding of the historical development of the uniquely South African law of contract from its Roman, Roman-Dutch and English roots.
- To provide the students with a thorough understanding of the essential elements of a valid contract in South African law.
- To assist students in being able to identify and solve authentic legal problems with regard to the negotiation and creation of contracts.
- To familiarise students with legal concepts and terminology commonly encountered in the law of contract.
- To assist students in extracting principles from law reports and other source material.

### **Credit Value**

10 Credits

### **Assumptions of Prior Learning**

When entering the course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Have a working knowledge of basic legal concepts and terminology.
- Be capable of independent learning.
- Read, analyse and extract principles from law reports and other source material.
- Understand the system of judicial precedent, and the important role precedent plays in private law.

- Have an understanding of legal problem-solving techniques and how to apply these to solve legal problems.
- Have a working knowledge of legal referencing conventions, and to be able to apply these to their written work.
- Have a basic understanding of constitutional principles and how these principles impact on private law issues.

## **2. OUTCOMES**

### **Critical Outcomes**

Students will be able to:

- (a) identify and solve practical legal problems.
- (b) organise and manage themselves and their work load.
- (c) collect, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.
- (e) use technology in legal research.
- (f) recognise problem-solving contexts involving the law of contract.

### **Intended Specific Outcomes**

The Law of Contract A course is designed so that students successfully completing this course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand how the South African law of contract has developed from its Roman, Roman-Dutch and English roots into a constitutional era.
- (b) Understand and explain the essential elements of a valid contract, and their various requirements.
- (c) Understand and explain the sorts of legal issues that can affect the existence of the various contractual elements, and how the contractual relationship will be affected as a result.
- (d) Apply the knowledge acquired during the course to solve practical problems with regard to the negotiation and creation of a contract.

## **3. TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is no comprehensive hand-out for the course, and students will be expected to take their own notes during class. In lectures, the substantive law will be discussed, leading precedents from the case law will be analysed, and the views of leading academic commentators will be explained. Occasionally, students will be expected to explain case law and consider practical questions in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. There is a prescribed

textbook for the course. Lectures are compulsory. The normal Faculty regulations concerning lecture attendance and DP certificates apply.

#### **4. TUTORIALS**

Voluntary supplemental tutorials are offered on a rotational basis in conjunction with the other Legal Theory Three courses. Problem solving will be a focus of these tutorial sessions.

#### **5. BASIC COURSE CONTENT (see course material for details)**

- I An introduction to the development of the South African Law of Contract.
- II The Elements of a Valid Contract:
  - Capacity
  - Consensus
    - Offer and Acceptance
    - Absence of consensus: Theories of Contract and the Law of Mistake; Signed Documents & Ticket Cases; Rectification
    - Improperly obtained consensus (Misrepresentation; Duress; Undue Influence; Bribery; fair dealing under the Consumer Protection Act)
  - Legality
    - General principles of public policy and legality
    - The impact of the Constitution on contract law
    - Specific topics on legality (contingency fee agreements; covenants in restraint of trade)
  - Possibility of performance
  - Formalities
- III Parties to contracts

The implications of legislation such as the Consumer Protection Act will be considered where relevant throughout the course.

#### **6. RESOURCES**

The core reading and study material for this course are the leading judgments on the aspects of the law of contract to be studied. These cases may be found in the law reports, which may be accessed in the Law Library, both in paper and electronic form. For a full list of cases, see the Course Outline for Students, 2018.

As far as textbooks are concerned, there is a prescribed text: Hutchison et al *The Law of Contract in South Africa* 3<sup>rd</sup> ed (Oxford University Press, 2017).

Other texts that can be consulted are:

Christie and Bradfield *Christie's The Law of Contract in South Africa* (2016), 7<sup>th</sup> edition, Butterworths: Durban.

Sharrock "The Law of Contract" in *LAWSA Vol 5(1)* (2004) Butterworths: Durban.

Kerr *The Principles of the Law of Contract* (2002) 6<sup>th</sup> edition, Butterworths: Durban.

Van der Merwe, Van Huyssteen, Reinecke and Lubbe *Contract: General Principles* (2016) 4<sup>th</sup> edition, Juta: Cape Town.

De Wet and Van Wyk *Die Suid-Afrikaanse Kontraktereg en Handelsreg* (1992) 5<sup>th</sup> edition, Butterworths: Durban.

Joubert *Contract: General Principles of the Law of Contract* (1987) Juta: Cape Town.

Lubbe and Murray *Farlam and Hathaway: Contract – Cases, Materials and Commentary* (1988) Juta: Cape Town.

Bhana, Bonthuys & Nortje *Students' Guide to the Law of Contract* (2015) 4<sup>th</sup> edition, Juta: Cape Town.

Students are strongly advised to utilise these resources in the course of their studies.

Students are also encouraged to browse through the shelves in the library or the Faculty's electronic page, and familiarise themselves with the Faculty's holdings. This will stand them in good stead when research is undertaken for assignments.

## 6. STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to:)</b>	<b>Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)</b>
Understand how the South African law of contract has developed from its Roman, Roman-Dutch and English roots.	<ul style="list-style-type: none"><li>- Identify from which system of law a particular rule of contract originates.</li><li>- Describe how the South African law of contract has absorbed features of these various legal systems.</li><li>- Discuss why South African law has chosen to adopt a particular rule from a particular system.</li></ul>	<ul style="list-style-type: none"><li>- Write a short essay in which the student discusses how South African law has developed from its various sources, and why this is so.</li><li>- Be able to explain the origin of a rule of contract in a particular context while answering a theory question or solving a legal problem.</li></ul>

To understand and explain the essential elements of a valid contract, and their various requirements.	<ul style="list-style-type: none"> <li>- Define the various essential elements of a contract.</li> <li>- Describe and explain the requirements that have to be satisfied for the various elements to exist.</li> <li>- Analyse and explain the court decisions that have authoritatively determined what the various elements and requirements are.</li> <li>- Demonstrate an understanding of key contractual terminology.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the requirements that have to be met for one of the various contractual elements to be satisfied.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
To understand and explain the sorts of legal issues that can affect the existence of the various contractual elements, and how the contractual relationship will be affected as a result.	<ul style="list-style-type: none"> <li>- Identify the sorts of legal issues that can affect the existence of one of the contractual elements.</li> <li>- Describe how and explain why it may be proved that one of the essential elements of the contract does not exist because of one of these issues.</li> <li>- Describe and explain the various remedies available where a legal issue with regard to the creation of the contract is identified and proved to be present.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the legal reasons why the one of the various contractual elements is not satisfied.</li> <li>- Write case notes discussing a leading precedent on an issue associated with the violation of a contractual element.</li> <li>- Write short essays on the remedies available where a contractual element is not satisfied.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to the negotiation and creation of a contract.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- State the relevant law, and discuss the relevant legal precedents with regard to that issue.</li> <li>- 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.</li> </ul>	<ul style="list-style-type: none"> <li>- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents.</li> </ul>

### Assessment Strategy

The final mark for the course is comprised of the following components:

Examination: out of 70 marks.

Class work: out of 30 marks.

**Total: 100 marks.**

## **Tests**

There is one test for this course, which is written mid-way through the course. The test will be out of 12 marks, and students have 3 minutes reading time, and 30 minutes in which to complete the test. The test will contain questions equivalent to that which may be found in the June examination, and will require the students to apply their knowledge to solve a legal problem. The test counts 40% (12 marks) of the class-mark component of the course. The test is compulsory.

## **Assignments**

There is one major assignment for this course, which is submitted towards the end of the second term. The assignment is an authentic one, and will require the students to write a mock judgment: the student must imagine that he or she is a judge who has to resolve a contractual dispute brought before his or her court. The assignment should be approximately 2500 words in length, and will have to be thoroughly researched, and correctly referenced and presented. The assignment counts 60% (18 marks) of the class-mark component of the course. The assignment is compulsory.

## **Examination**

One two-hour paper will be written in June. The examination will be out of 70 marks. All questions are compulsory. The questions will require students both to be able to explain legal rules and principles in a theoretical sense, to write case notes on leading precedents, as well as to apply their knowledge to solving practical problems in authentic contexts. The examination is compulsory. An external examiner assesses the quality of both the examination paper and the students' answers.

## **7. EVALUATION**

This course is evaluated on a cyclical basis, and is also evaluated as part of the global Legal Theory Three evaluation at the end of the academic year.