

COMMERCIAL LAW 202: PAPER 1

THE LAW OF SALE, LEASE &

CARRIAGE 2019



1. INTRODUCTION

Welcome to Commercial Law 202, Paper 1 in 2019. This outline contains general information regarding Paper 1 and includes the three modules for this course, namely:

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

1.1 Overview

The law of sale, lease and carriage is one of two Commercial Law courses offered in the second semester to second year level students registered in the Faculty of Commerce (COL 202, paper 1 and COL 202, paper 2). Approximately 70% of the course is dedicated to the law of sale and lease in equal measure, with carriage 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 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 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 or lease relationship and how situations are dealt with by the law.

1.2 Credit Value

7.5 Credits.

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 and carriage.
- To understand and explain some of the key legal consequences of entering into a contract of sale, lease 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, particularly those regulated by statutes.

3. TEACHING METHODS

Commercial Law 202 Paper 1 consists of three different sections, namely, the law of sale, the law of lease and the law of carriage – taught in the second semester by **Ms TN Mashinini** (Sale & Lease) and **Mr Moroeng** (Carriage). 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 *viva voce* lectures and PowerPoint presentations will be utilised 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, while some topics will be covered orally in class only. 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 class.

4. ASSESSMENT

There will be two formal tests for Commercial Law 202: Paper 1 which will make up the course's class work component. The test will be combined with Commercial Law 202: Paper 2.

Test 1: 23 August 2019

Test 2: 27 September 2019

Both tests will be written at 18:00 in the Graham Room, Faculty of Law.

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 November 2019. 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, 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

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 (specifically in reference to the law of carriage). Legislation can be accessed on the internet via the Rhodes library webpage. Click on the Netlaw database on the electronic information resources library site.

S Kopel *Guide to Business Law* 6th ed (2017) Cape Town: Oxford University Press

J Scott & S Cornelius (eds) *The Law of Commerce in South Africa* 2nd ed (2014) Cape Town: Oxford University Press

A Govindjee *et al Commercial Law: Fresh Perspectives* 2 ed (2014) Cape Town: Pearson

G Glover *Kerr's The Law of Sale and Lease* 4th ed (2014) Durban: LexisNexis