



RHODES UNIVERSITY

LAW OF PARTNERSHIPS AND TRUSTS – OUTLINE - 2020

1. INTRODUCTION

1.1 Purpose of the course

This course aims at exposing you to some of the entities available for conducting business and holding assets in South Africa, namely sole proprietorships, co-operatives, partnerships and trusts. (Companies are dealt with in Company Law A and B.) The emphasis of the course will fall primarily on the nature, establishment, functioning and winding-up of these structures. The course aims to give you both the theoretical basis upon which these entities (particularly partnerships and trusts) exist in South African law, and also practical examples and exercises so that you will be confident in dealing with partnership and trust matters as a legal practitioner.

1.2 Credit Value

10 Credits

Assumptions of Prior Learning (or *Learning assumed to be in place*)

Before you start this course, you must be able to:

- Write and communicate in coherent English.
 - Demonstrate a thorough knowledge of the general principles of the law of contract.
 - Demonstrate a working understanding of the law of agency.
 - Be capable of independent learning.
 - Understand the system of judicial precedent and the important role precedent plays in our law.
 - Read, analyse and extract principles from law reports and other source material.
 - Apply legal problem solving techniques to practical situations.
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2. OUTCOMES

2.1 Critical Cross-Field Outcomes

Students will be able to:

- a) identify and solve practical legal problems
- b) work in a team
- c) organize and manage themselves
- d) collect, analyse and evaluate information from diverse sources
- e) communicate effectively
- f) use technology to aid their research
- g) recognize problem-solving contexts in partnership and trust law

2.2 Specific Intended Outcomes

This course is designed so that after successfully completing this course, you should be able to achieve the following outcomes:

- Provide an overview of the concepts and principles of sole proprietorships, co-operatives, partnerships and trusts in South African law.
- Identify and distinguish between the essential elements of each business or asset holding form.
- Evaluate and appreciate the comparative advantage(s) and disadvantage(s) of each business or asset holding medium.
- Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various entities.
- Apply the knowledge acquired during the course to solve practical problems with regard to business and asset holding entities.

3. TEACHING METHODS AND STUDENTS' LEARNING RESPONSIBILITIES

Students are expected to take responsibility for their own learning by reading and preparing themselves in advance of each lecture.

The major teaching method in this course is traditional lectures which will often, but not always, be accompanied by PowerPoint slides. On those occasions where slides are used, they will NOT be made available to students.

As many students will be aware, the legal profession is far from immune from the trend towards automation and in particular from the increasing use of artificial intelligence. It is not only conceivable, but likely, that within the next 10 to 20 years a great number of the more mundane tasks undertaken by lawyers will be undertaken by computers. For example, legal research and the drafting of legal documents can quite easily be automated

using current technology. As technology improves and becomes more acceptable both to practitioners and clients its use will increase. It is quite conceivable that much of the work even in civil and criminal trials will be automated. The technology already exists to scan a person's brain and determine whether they are telling the truth or not. If it were to become acceptable (and I think it will) that the brains of witnesses giving evidence in trials will be subject to electronic monitoring and evaluation then the role of lawyers and judges in evaluating evidence will be undertaken by a computer. From that point, it is only a small step to imagine that computers could entirely replace both the lawyers and the judges in the trial process.

One must then ask what will lawyers of the future do? Although it is impossible to predict, I suggest that at least for the foreseeable future many clients will be reluctant to consult directly with a computer on important issues in their personal or business lives. The (human) lawyer will thus continue to play a role in gathering information from clients and in providing them with feedback, even if the work of legal research, evaluation of information and drafting is automated. The key lawyering skill here is listening and note-taking, and knowing what to sift out of a stream of information, and what to pay attention to. That is a skill which does not magically appear on the day you start practice, but rather a skill that needs to be worked on. For that reason it is my intention not to make available PowerPoint slides and the other information which I have traditionally made available in this course. By taking that course of action, my intention is to oblige members of the class to take notes during lectures and thus to hone their notetaking and information sifting skills.

This will also encourage students to ask questions during lectures and indeed to turn up at lectures. On this topic, students will be aware that I take a hard line on lecture attendance and I do not hesitate to remove a DP certificate for non-attendance. This is not done out of some perverse desire to punish students who happen to oversleep and miss a lecture. It is done because of the vital importance for an attorney or advocate to arrive promptly and well-prepared for meetings or at court. My demand that you arrive promptly and well prepared for lectures is part of your training to meet that professional expectation.

4. COURSE/MODULE CONTENT

The course covers four types of entities which are commonly used in South Africa either as mediums through which to conduct business, or for the holding of assets. These are:

- Sole proprietorships
- Partnerships
- Co-operatives
- Trusts

The main focus of the course is on partnerships and trusts, which will be examined from a legislative, a case law, and above all from a practical point of view. The emphasis in lectures, tests and assignments, will be on equipping students to deal with real legal problems involving these entities, which they are likely to face in practice as attorneys, advocates or corporate lawyers. The course will not deal with testamentary trusts except in cases where reference to a testamentary trust is necessary in order to illustrate a general trust principle. Testamentary trusts are dealt with in a separate course: the Law of Succession and Administration of Estates.

5. RESOURCES

There is no comprehensive South African textbook dealing with partnership law. Students will be referred to various textbooks, articles and cases during lectures. The best, and most recent, textbook on trust law is: Honoré's South African Law of Trusts (6th ed. 2018). There are two copies available on short loan. That means that students will need to engage with the textbook early in the semester, because demand for it is likely to be overwhelming shortly before the exam. Students who have a book budget available to them are encouraged to buy their own copy of this book. Students will be referred during lectures to various other textbooks, journal articles, cases and internet resources.

6. STUDENT ASSESSMENT

SPECIFIC OUTCOMES
On completion of this course, you should be able to:

ASSESSMENT CRITERIA
(What evidence must you provide to show that you are competent?)
You must be able to:

ASSESSMENT TASKS
The evidence will be gathered in:

Provide an overview of the concepts and principles of entrepreneurial Law in South Africa.

Apply statutory and common law principles.

Identify critical aspects of case law.

Demonstrate and understanding of the concepts and principles contained in the case law and statutes.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Compare aspects of South African law with selected foreign laws.

Identify and distinguish between the essential elements of each business form.

Describe and explain the various business and asset holding structures.

Identify the relevant legislative provisions.

Identify critical aspects of case law regarding each business and asset holding form.

Demonstrate an understanding of the concepts and principles contained in the case law and statutes.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Evaluate and understand the comparative advantage(s) and disadvantage(s) of each business or asset holding structure.

Compare different business and asset holding mediums in respect of the limitations and requirements imposed by statute and the common law.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Compare the various entities in respect of the advantages associated with each entity, having regard to practical situations.

Describe the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of the parties to the various business and asset holding forms.

Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations.

Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises and asset holding entities.

Identify the relevant legal problem or issue.

Tests

State the relevant law, Examination
and discuss the relevant
legal precedents with
regard to that issue.

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.

7. ASSESSMENT

The class work component of the course amounts to 30% of the final mark and the remaining 70% comprises one two hour examination, written in November.

Students are assessed for the class work component on the basis of one compulsory assignment and one compulsory test will each count 15% towards the final mark of the course.

The test and examination may contain:

- Problem questions which require the application of statute, common law and case law to solve practical issues;
- Case notes; and
- Theory type questions, in which students are required to describe, explain and critically evaluate the current law.

Attendance at lectures is compulsory, and a register will be taken. Students are responsible for ensuring that they have signed the attendance register. It is accepted that the ideal of 100% attendance is generally not attainable. A student may miss no more than six lectures for this course. Students are responsible for collecting, retaining and presenting all relevant documents (doctor's letters, etc) in respect of the lectures missed and filling out the necessary LOA (leave of absence) form. **A student who misses more than the permissible number of lectures, or who fails to write the test and/or assignment has not met the course requirements and as a result no DP certificate will be granted for this course.**

8. EVALUATION

Evaluation of the course is carried out from time to time (not every year) using the Rhodes University Web-based Evaluation Assistant and it is conducted by a staff member who has not been involved in the course. Students respond to a list of questions by awarding a rating in addition to responding to some global questions. The responses are analysed by the Centre for Higher Education, Teaching and Learning, who compile a report for the lecturer. The results of the report are then conveyed to students. This provides an opportunity for the lecturer to interact with students and reach consensus on how aspects of the course can be improved. It also provides an opportunity for students to reflect on their own learning strategies and commitment to the course.

9. CONTACT DETAILS

Should you wish to contact the lecturer, Adv Craig Renaud, you may do so via e-mail: c.renaud@ru.ac.za or visit his office on **the top floor next to the Attic** of the Law Faculty.

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JULY 2020