

# *Commercial Law 202*

## *Paper 1*

Course Coordinator & Lecturer

**Ms. TN Mashinini**

**RHODES UNIVERSITY  
2020**

**3<sup>rd</sup> term**



## SECTION A: COMMERCIAL LAW 2 GENERAL INFORMATION

Welcome to Commercial Law 2! The information in this hand-out has been compiled to assist you. Please read it carefully to ensure that you are familiar with the contents.

1. COL 201 and COL 202 are separate courses, each of which gives a student one semester credit towards a degree. A credit in one course is not contingent upon passing or registering for the other course.
2. COL 201 is taught and examined in the first semester, and COL 202 is taught and examined in the second semester.
3. A student will obtain a credit for Commercial Law 2 according to the following rules:
  - 3.1. A credit will be given if a student has passed both courses irrespective of the year or examination in which they passed.
  - 3.2. An aggregated credit (ACR) will be given if a student has an aggregated mark of at least 50% for both courses combined (i.e. COL 201 and COL 202) and has obtained at least 45% in the course failed.
  - 3.3. **Aggregation may only take place in respect of examinations written in the same academic year.**
4. COL 201 consists of two papers.
  - a. Paper 1 covers Special Contracts: Sale, Lease, Insurance, Carriage and Employment.
  - b. Paper 2 covers Banking, Security and Payment Methods.

The course co-ordinator for COL 201 and COL 202 is Ms Nomalanga Mashinini and she can be contacted at [n.mashinini@ru.ac.za](mailto:n.mashinini@ru.ac.za) or in her office on the first floor of the Law Faculty building. Any problems of an administrative nature should be directed to her while queries regarding the content of the course should be directed to the relevant lecturer.

5. COL 202 consists of two papers.
  - a. Paper 1 covers Intellectual Property, Franchising, Credit Agreements, Consumer Protection and Commercial Crimes.
  - b. Paper 2 covers Competition Law, Business Ethics and Alternative Dispute Resolution.
6. It is recommended that students join the RUConnected pages for this course (COL 201 and COL 202). These pages will be used as the primary mode of communication with the class. Students will be provided with course materials and they will be directed to any further reading during lectures. Additional sources of information will be posted on RUConnected.
7. Two two-hour exams will be written in June 2020 and two in November 2020 i.e. one examination each for Papers 1 and 2 in June and November.
8. The class mark component of COL 201 and COL 202 amount to 30% of the final mark. COL 201 will be examined in June 2020 and COL 202 will be examined in November 2020. The marks for Papers 1 and 2 will be added together and reduced to a mark out of 70. The remaining 30 marks will be calculated on the basis of the tests written during the relevant semester.
9. Students who fail COL 201 or COL 202 may be granted supplementary examinations provided that they obtain at least 40%.
10. There will be two **compulsory** class tests written for both COL 201 and COL 202 (i.e. two tests for Com Law 201 and two tests for Com Law 202).

**IT IS A DP REQUIREMENT FOR STUDENTS TO WRITE THE TESTS AND YOU WILL ONLY BE EXCUSED IF YOU HAVE A VALID LEAVE OF ABSENCE.**

**STUDENTS ARE REQUIRED TO IDENTIFY THEMSELVES AT TESTS BY PRODUCING A VALID STUDENT CARD OR SOME FORM OF PHOTOGRAPHIC ID.**

The marks obtained for the tests will count 30% towards the final mark for COL 201 and COL 202 and so it is in students' interests to take them seriously. The test dates, times and venues are reflected in the course outlines for each module.
11. The tests will last for 60 minutes and will count out of 30 marks. The tests will contain three questions which are all compulsory for a total of 30 marks for the whole test.

# **SECTION B: COMMERCIAL LAW 202 PAPER 1**

## **COURSE OUTLINE**

### **1. INTRODUCTION**

#### **1.1. Overview**

Commercial Law 201 is offered at second year level to students registered in the Faculty of Commerce. The purpose of the course is to familiarise students with aspects of South African commercial law that are not considered in Commercial Law 1. Paper 1 focuses on credit agreements and consumer protection, intellectual property, franchising and commercial crimes. This course runs from **3 August 2020 to 11 September 2020** (subjective to changes by university management).

### **2. OUTCOMES**

#### **2.1. Critical cross-field outcomes**

By the end of this course, it is intended that students will be able to:

- Identify and solve problems;
- Organise and manage themselves;
- Communicate effectively;
- Use technology; and
- Analyse and evaluate information.

#### **2.2. Intended specific outcomes**

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

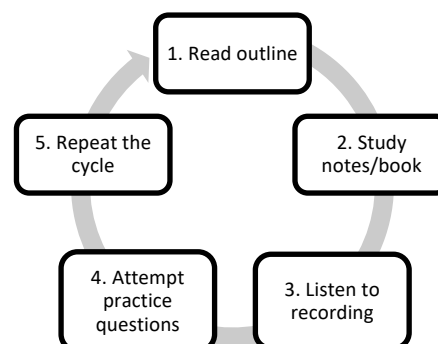
- Distinguish between different categories of intellectual property;
- Describe and apply the basic legal principles of the various branches of intellectual property;
- Demonstrate an understanding of the legal rules that apply to franchising, as well as the relationship between intellectual property and franchising;
- Describe the main provisions of the National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008 and apply them to a set of facts;

- Demonstrate an understanding of different types of commercial crimes, the role of and functions of the specialised courts and dispute forums created by legislation relating to the various units in this course.
- Accurately use legal concepts and terminology related to the relevant area of law.

### 3. TEACHING METHODS

A fairly comprehensive module and bibliography are provided for the course. Students are expected to read this course outline in order to acquire a basic familiarity with the relevant topic. Lectures are recorded and the discussion contained in each recording is an additional source which supplements the prescribed books (if available) and the notes provided on RUconnected / Course Pack. This outline and the course notes are not designed to provide all the information required to pass this part of the course; therefore, various concepts will be dealt with **in lecture recordings** if not comprehensively dealt with in the module documents.

Approach remote learning in the following sequence:



### 4. STUDENT ASSESSMENT

Please visit the RUConnected page to see the tests lined up for this course. At the end of each theme, you will be expected to complete an online quiz as part of continuous assessment. Each of these quizzes will count towards your course mark of 30%. The exam will count 70% towards your final mark.

#### ALTERNATIVE ASSESSMENTS ASSIGNMENTS/TESTS

14 August	Consumer Protection
4 September	Intellectual Property
11 September	Franchises and Crimes

(These test dates are final but also subject to any changes that the university management may propose throughout the year. Please proceed to prepare for these tests, the course lecturers announce changes.)

Specific outcomes	Assessment criteria	Assessment tasks
Distinguish between different categories of intellectual property	<ul style="list-style-type: none"> <li>Identify and distinguish between the subject matter of trade marks, copyright, patents and designs with reference to factual situations</li> <li>Compare and contrast the legal protection that applies to each category of intellectual property</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning (formative)</li> <li>Problem and theory questions in tests and examination (summative)</li> </ul>
Describe and apply the basic legal principles of the various branches of intellectual property	<ul style="list-style-type: none"> <li>Describe and explain the relevant legislation and case law</li> <li>Apply the legislation and case law to problem questions/factual situations</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning (formative)</li> <li>Problem and theory questions in tests and examination (summative)</li> </ul>

Demonstrate an understanding of the legal aspects involved in franchising	<ul style="list-style-type: none"> <li>• Identify the legal principles that apply to franchising</li> <li>• Explain and evaluate the roles of the franchisor and the franchisee</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in tests and examination (summative)</li> </ul>
Describe the main provisions of the National Credit Act and the Consumer Protection Act	<ul style="list-style-type: none"> <li>• Describe and explain the relevant legislation</li> <li>• Apply the legislation to problem questions/factual situations</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in tests and examination (summative)</li> </ul>
Demonstrate an understanding of different types of commercial crimes	<ul style="list-style-type: none"> <li>• Identify and distinguish between different kinds of commercial crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> </ul>

	<ul style="list-style-type: none"> <li>• Discuss the legal principles that apply in a factual situation</li> </ul>	<ul style="list-style-type: none"> <li>• Problem and theory questions in tests and examination (summative)</li> </ul>
Accurately use legal concepts and terminology related to the relevant area of law	<ul style="list-style-type: none"> <li>• Use of appropriate and accurate terminology in intellectual property, franchising, credit agreements, consumer protection and commercial crimes</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in tests and examination (summative)</li> </ul>

## 5. RESOURCES

Please note that there are **no** prescribed textbooks 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). You will also need to consult legislation from time to time. Legislation can be accessed through the Rhodes library webpage or on [www.saflii.org.za](http://www.saflii.org.za).

S. Kopel	<i>Guide to Business Law</i> (2017) OUP: Cape Town. <b><i>This textbook is particularly recommended as it covers the topics in Com Law 201 as well as 202</i></b>
T. Woker	<i>The franchise relationship under South African Law</i> (2012) Juta: Claremont
J. Scott et	<i>The Law of Commerce in South Africa</i> 2 <sup>nd</sup> ed. (2015) Oxford University Press Southern Africa: Cape Town



## 6. COURSE CONTENT

This part of COL 202 is mainly based on statutory laws (Acts promulgated by Parliament and signed by the President as law). There is no need to study the Acts in full, but know the content discussed in the course, as it refers to the Acts.

### Theme 1: Introduction to Consumer Protection Law

**Purpose of theme:** This section of the work is aimed at exposing you to social justice legislation that was enacted to help consumers in South Africa. Trade laws and consumer protection has become one of the most important aspects of commercial law. In this theme you will learn about the protection of consumer rights and suppliers' duties in the course of trade.

#### Study Unit 1: Credit agreements

##### Prescribed sources

- Scott & Cornelius p439-444.
- National Credit Act 34 of 2005: sections 1-6, 8-9, 12, 14-15, 26, 60-65, 78-80.

The topics discussed in this unit include: types and categories of credit agreements, requirements for credit lending and mechanisms to resolve over indebtedness through debt counselling. A case study on reckless lending is included in this unit to illustrate the damaging effects of reckless lending, and how the law metes out punishment for institutions that engage in reckless lending. By the end of this unit, you will know how the National Credit Act influences the terms of security and credit arrangements which you learnt about in the second paper of Commercial Law 201.

#### Study Unit 2: Consumer protection

##### Prescribed sources

- Scott & Cornelius p439-444.
- Consumer Protection Act 68 of 2008: sections 1-6, 11-12, 14, 16, 18, 20-22, 30-32, 40, 55, 85, 99.
- Electronic Communications and Transactions Act 35 of 2002.

The topics discussed in this unit include: consumer rights, consumer privacy, prohibition of unfair marketing practices and rules to ensure fair contractual arrangement for consumers who stand in unequal bargaining positions compared to their suppliers. By the end of this unit, you will know how the Consumer Protection Act influences the terms of contractual arrangements which you learnt about in Commercial Law 201, paper 1.

## Theme 2: Introduction to Intellectual Property Law

**Purpose of theme:** This theme entails an introduction to the legal recognition of the types of intellectual property and the protection thereof. You will learn the requirements for different forms of intellectual property protection and practise how to apply these rules to a set of facts.

### Study Unit 1: Introduction to Intellectual Property

#### Prescribed sources

- Scott & Cornelius p439-444.

Unit 1 gives a broad introduction to intellectual property as a field of law. It also encompasses the discussion of various types of intellectual property that form part of this theme, but also those not included in the theme with a view to reveal the broadness of this area of law. This section also provides a reflection on an ongoing debate about the restrictive nature of intellectual property rights, in that such rights create monopolies, make medicines expensive and stifle, rather than encourage innovation.

### Study Unit 2: Copyright

#### Prescribed sources

- Scott & Cornelius p444-452.
- Copyright Act 98 of 1978: sections 1-12, 21, 23-24.

In this unit, you will learn what copyright is, which material can be subject to copyright and how long copyright protects such material. You will also study the rules which regulate whom the owner of the copyright is, as opposed to who is the author of the copyrighted material. We will also look at the Copyright Amendment Bill, and why it is so contentious. Lastly, copyright infringement and remedies are discussed. An interesting article to read by Sanya Samtani on the problems around the Copyright Amendment Bill is available on this link: [https://www.dailymaverick.co-za.cdn.ampproject.org/c/s/www.dailymaverick.co.za/opinionista/2020-07-12-parliament-can-uphold-the-constitution-by-passing-the-copyright-amendment-bill-again/amp/](https://www.dailymaverick.co.za/cdn.ampproject.org/c/s/www.dailymaverick.co.za/opinionista/2020-07-12-parliament-can-uphold-the-constitution-by-passing-the-copyright-amendment-bill-again/amp/).

### Study Unit 3: Trademarks

#### Prescribed sources

- Scott & Cornelius p452-458.
- Trademarks Act 194 of 1993: sections 1-2, 9-10, 33-34.

In this unit, you will learn about brand protection through the use of trademark registration. You will also learn which material can be subject to trademark and how long trademarks are registered. You will also study the rules which regulate the registration of similar and same marks. Lastly, we will explore the ways in which trademarks are used, which amount to infringement, and the remedies available to compensate or correct these violations.

## Study Unit 4: Patents

### Prescribed sources

- Scott & Cornelius p458-462.
- Patents Act 57 of 1978: sections 2, 3, 25, 45-46.

In this unit, you will learn what an invention is, which inventions can be protected with patents and for how long patents last. You will also study the rules which regulate whom the owner of a patent is, as opposed to who is the inventor of the invention. We will also look at the controversies of patent protection, especially software patents. Lastly, patent infringement is also covered in this unit, and remedies for such violations are carefully discussed.

## Study Unit 5: Designs

### Prescribed sources

- Scott & Cornelius p462-463.
- Designs Act 195 of 1993: sections 1-2, 14-15, 20, 22, 35-37.

In this unit, you will learn what designs are, which drawings and illustrations can be protected using design rights and how long these rights protect such material. You will also study the rules which regulate whom the owner of the design right is, as opposed to who is the author of the design. Lastly, we will cover the infringement of designs rights and carefully discuss the remedies available for such violations.

## Theme 3: Franchise Agreements

**Purpose of theme:** This section of the course is focussed on franchising as a frequently used business model regulated by the Consumer Protection Act 68 of 2008. In this section you will distinguish between a franchise, an outlet, a branch and chain. You also learn the advantages and disadvantages of franchise agreements in view of the legal rules that are applicable to such agreements.

### Prescribed sources

- Woker p19-24; p32-41
- Consumer Protection Act 68 of 2008: section 7.

## Theme 4: Selected Commercial Crimes

**Purpose of theme:** This theme will briefly cover the definitional elements of a crime and specific crimes that are of a commercial nature and/or are usually committed in a commercial space in relation to property (including intellectual property) and against public welfare.

### Study Unit 1: Elements of Crime and Specific Crimes

#### Prescribed Source:

- Prevention of Organised Crime Act 121 of 1998: sections 1-4.
- Financial Intelligence Centre Act 38 of 2001: sections 1-2, 27-33, 68.
- Cybercrimes Bill 2017: sections 2-3, 7-8, 10, 16.

This section starts with a cursory overview of the common law general principles of crime. You will learn the requirements for a crime, the specific forms of crimes such as theft and fraud, and statutory crimes committed in the confines of the commercial industry, such as corruption, racketeering, money laundering and hacking.

### Study Unit 2: Counterfeit Goods

#### Prescribed source

- Counterfeit Goods Act 37 of 1997: sections 1-3, 11, 19.

In this unit, you will learn what counterfeit goods are, which intellectual property rights are protected under the Counterfeit Goods Act. You will also study the rules which regulate inspection and seizure of goods, as well as the civil and criminal penalties imposed on people who contravene the Counterfeit Goods Act.

## 7. EVALUATION

Towards the end of the third term, students will be presented with a questionnaire on Google Forms that they can fill in to provide feedback on the course. Students are encouraged to use this opportunity to provide constructive criticism and feedback for the lecturers of this course to engage with. Such feedback should be aimed at improving and transforming the course.

Last updated: July 2020

*I wish you all the best and the greatest success in completing this course.*  
N Mashinini