

Commercial law 202

Paper 2

Lecturers

Adv. J Carkeek & Ms. TN Mashinini

RHODES UNIVERSITY
2020

4th term

ALTERNATIVE
DISPUTE
RESOLUTION

COMPETITION



BUSINESS
ETHICS



1. INTRODUCTION

Welcome to Commercial Law 202, Paper 2 in 2020. This outline contains general information regarding Paper 2 and includes the three modules for this course, namely:

- (a) Competition Law (taught by Ms. N Mashinini);
- (b) Business Ethics (taught by Adv J Carkeek); and
- (c) Alternative Dispute Resolution (taught by Adv. J Carkeek).

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1.1 Overview

Commercial Law 202, Paper 2 is a component course of Commercial Law 202. This course runs from **21 September 2020 to 6 November 2020** (subjective to changes by university management). Upon completion of the course, students should have broad overview of the legal principles of insurance law, competition law, alternative dispute resolution and business ethics, and will be able to apply these principles in the commercial or accounting professions.

1.2 Credit Value

7.5 credits, which translates into 7.5 hours to be spent on this course per week. There are four 45-minute lectures per week during the fourth term.

1.3 Assumptions of Prior Learning

It is assumed that students:

- have a basic working knowledge of the South African legal system, the hierarchy of the courts and legal terminology;
- are capable of independent work;
- are capable of communicating in written and spoken English;
- are able to identify and apply legal principles to a set of acts;
- are capable of solving problems.

2. OUTCOMES

2.1 Critical cross-field outcomes

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:

- Demonstrate knowledge of the objectives and rationale for the regulation of competition.
- Identify examples of restrictive practices and the abuse of market dominance.
- Understand the functions of the Competition Commission, Competition Tribunal and Competition Appeal Court.
- Demonstrate knowledge of the competition authorities' powers of investigation and enforcement, and penalties which may be imposed on companies.
- Understand the essential tenets of ethical business norms and internal structures that promote ethical business practice.
- Demonstrate an ability to distinguish ethical from unethical business practices.
- Demonstrate a working knowledge of negotiation, mediation and arbitration principles, process and strategies.
- Identify disputes that should appropriately be referred to negotiation, mediation or arbitration.

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 a summation of this outline, the prescribed book and the slides provided on RUconnected / Course Pack. The module is not designed to provide all the information required to pass this part of the course and various concepts will be dealt with in lecture recordings that are not comprehensively dealt with in the module.

4. STUDENT ASSESSMENT

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.

CONTINUOUS ASSESSMENTS (ASSIGNMENTS/TESTS)

2 October	Competition Law
16 October	Business Ethics
30 October	Alternative Dispute Resolution

(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
To understand and explain the foundational principles of competition law.	<ul style="list-style-type: none"> Define and explain competition, in a free market economy. Apply any relevant statutory law principles. 	<ul style="list-style-type: none"> Class/Group/Online Forum discussion and questioning. Problem and theory questions in tests and examinations.
To understand and explain the legal obligations that are imposed upon competing firms, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> Define and explain the various prohibited practices in terms of the Competition Act. Understand the functions of the Competition Commission, Competition Tribunal and Competition Appeal Court. Demonstrate knowledge of the competition authorities' powers of investigation and enforcement, and penalties which may be imposed on companies. 	<ul style="list-style-type: none"> Class/Group/Online Forum discussion and questioning. Problem and theory questions in tests and examinations.
Understand the essential tenets of ethical business norms and internal structures that promote ethical business practice.	<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. Distinguish ethical from unethical business practices. 	<ul style="list-style-type: none"> Class/Group/Online Forum discussion and questioning. Problem and theory questions in tests and examinations.
Demonstrate a working knowledge of negotiation, mediation and arbitration principles, process and strategies.	<ul style="list-style-type: none"> Identify disputes that should be appropriately referred to negotiation, mediation or arbitration. 	<ul style="list-style-type: none"> Class/Group/Online Forum discussion and questioning. Problem and theory questions in tests and examinations.

5. 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.

1. S. Kopel *Guide to Business Law* 6th ed (2017) Cape Town: Oxford University Press
2. J. Scott & S. Cornelius (eds) *The Law of Commerce in South Africa* 2nd ed (2015) Cape Town: Oxford University Press
3. A. Govindjee *et al*, *Commercial Law: Fresh Perspectives* 3rd ed (2019) Cape Town: Pearson
4. L. Kelly *et al*, *Principles of Competition Law* (2017) Cape Town: Oxford University Press

6. EVALUATION

Towards the end of the semester, 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.

7. COURSE CONTENT

THEME 1: COMPETITION LAW

- Objects of, and rationale for, competition law
- Regulation of competition in terms of the Competition Act 89 of 1998: sections 1-10
- Restrictive horizontal practices
- Restrictive vertical practices
- Abuse of dominance
- Price discrimination

THEME 2: BUSINESS ETHICS

- The application of moral or ethical norms to business practice Study
- Business ethics as an academic field of study
- Internal structures that promote business ethics

THEME 3: ALTERNATIVE DISPUTE RESOLUTION

- An overview of regulation, mediation and arbitration as alternatives to court litigation
- Negotiation strategies, process, tactics and ethics
- Mediation and the mediator: goals, principles, skills and ethics
- Various aspects of the Arbitration Act of 1965
- The arbitrator: appointment, duties and functions
- The proceedings of an arbitration tribunal and the arbitration award.

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