



**RHODES UNIVERSITY**  
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# **LEGAL PLURALISM**

## **2020**



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**Overview:**

Legal Pluralism is a stand-alone semester course that counts for credit in the Faculty of Law for LLB2, as well as one of the courses for Legal Theory 3 in the Faculties of Humanities, Commerce and Science. It aims to provide knowledge on legal pluralism—which refers to the interaction of multiple normative systems (informal and formal social norms) in a state. It will introduce students to the theoretical and methodological basis for the study of the coexistence of legal orders and the challenges this raises, and familiarise students with the debates on socio-legal concerns and the comparative perspectives of cross-cutting issues around pluralism. The course will stimulate debate and critical legal thinking on thematic issues such as the application of customary law and other religious norms in our courts, the interactions between human rights and customary/religious norms, Muslim and Hindu marriage laws, and issues around women's rights. Students will be encouraged to develop critical perspectives in light of their diverse historical, cultural and socio-economic backgrounds.

**Credit value**

10 credits at NQF level 7

**Assumptions of prior learning**

In order to successfully complete this course, students should:

- Be capable of writing and communicating in coherent English.
- Be capable of accessing resources such as textbooks, law reports and statutes in the Law Library and online
- Be familiar with basic legal concepts and terminology.
- Be capable of independent research and learning
- Be capable of reading, critically analysing and extracting relevant legal principles from law reports and other source material.
- Understand the system of judicial precedent
- Have a basic understanding of legal problem-solving techniques, and how to apply these to solve legal problems.
- Have a working knowledge of the legal referencing conventions and techniques prescribed by the Faculty of Law, and be able to apply these to their written work.
- Be familiar with core constitutional principles, values and ideas

**Critical Outcomes**

Students will be able to:

- Identify and solve practical legal problems
- Organise and manage themselves and their workload
- Collect, analyse and evaluate information from various sources, as well as information conveyed in lectures
- Communicate effectively in class, written assignments and tests

- Use technology in legal research and accessing prescribed material
- Understand the nature of legal pluralism and how customary and/or religious law is applied by the courts

### **Expected Outcomes**

Students who have studied the course are expected to be able to:

1. Identify the socio-legal systems of the South African normative order.
2. Understand the operation of and tensions within a plural-legal society such as South Africa.
3. Demonstrate an understanding of the historical development of African customary law and problems associated with its application in the legal system.
4. Acquire capacity to conceive law in plural ways and understand law in comparative perspective, exceeding the level of formal law.

### **Teaching Method:**

The course will run for 13 weeks and will be presented online with specific topics covered in weekly lectures. The various topics will be covered in recorded video lectures and slides, writing opportunities and other formative tasks. Students are expected to take responsibility for their own learning by ensuring that the prescribed readings are completed before each lecture, taking their own notes on the content covered in lectures and supplementing this using the prescribed readings. Problem-solving scenarios, theoretical discussions and critiques, as well as case based analyses will be put before students throughout the course and assessment. Supplementary instruction in forms such as videos, worksheets, quizzes and forum discussions will take the place of conventional face-to-face tutorials.

### **Course Content:**

1. Theories of legal pluralism and challenges to the concept of law
2. The origins and evolution of legal pluralism in South Africa
  - 2.1. History and application of African customary law and other socio-legal norms
  - 2.2. Transformative constitutionalism, the legitimisation of new forms of authority, issues of recognition
3. Bill of Rights and customary/religious normative systems (theoretical debate and case analysis)
4. Marriage laws in comparative perspective (customary, Hindu, and Muslim norms)
5. Dispute settlement in plural legal settings
  - 5.1. Traditional courts and the role of traditional institutions
  - 5.2. The relationship between state institutions and local institutions
  - 5.3. Informal systems of alternative dispute settlement
6. \*Customary property rights\* (time dependent)

**Resources:**

The core readings and materials for this course are the leading judgments on the various aspects of customary and religious law. This will be supplemented with journal articles and texts on legal pluralism, all of which can be found electronically through the Law Library database. A list of the prescribed readings will be provided but you are strongly encouraged to read wider than this list.

Prescribed textbook:

C Rautenbach (ed), JC Bekker, NMI Goolam *Introduction to Legal Pluralism in South Africa* 5 ed (2018) LexisNexis: Durban

Other relevant works where accessible:

C Himonga (ed), T Nhlapo (ed), IP Maithufi, SM Weeks, L Mofokeng, D Ndimma *African Customary Law in South Africa* (2014) OUP: Cape Town

L Mofokeng *Legal Pluralism in South Africa* (2009) Van Schaik: Pretoria

TW Bennett *Customary Law in South Africa* (2004) Juta: Cape Town

**Assessment:**

The final mark for the course is comprised as follows:

Continuous assessment: 50

Summative assessment: 50

**Total: 100 marks**

Continuous Assessment:

The continuous assessment component of the course will be made up of a writing task, which will count 20 marks, and an assignment that will count 30 marks. Both assessments are compulsory.

Summative Assessment:

One timed summative assessment will be done in November. This will be out of 50 marks and all questions will be compulsory. An external examiner assesses the quality of both the examination paper and the students' answers.