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# **LAW OF AGENCY, INSURANCE & CREDIT AGREEMENTS 2023<sup>1</sup>**

The Law of Agency, Insurance & Credit Agreements is a final year LLB semester course counting 10 credits at NQF level 8. The Insurance Law component starts the course and comprises approximately 9 lectures (4.5 weeks). Credit Agreements follows immediately after the Insurance Law component. Credit Agreements comprises approximately 4 lectures (2 weeks). The Law of Agency component of the course will comprise approximately 13 lectures (or 6 weeks).

For purposes of coherence, each component of the course is discussed separately below in order to explain more specifically the nature of each component.

## **A AGENCY**

### **INTRODUCTION**

#### **Overview**

The purpose of the agency portion of the course is to provide insight into the nature and function of the law of agency in South Africa. More particularly:

- To provide students with a thorough understanding of the essential characteristics of agency and how the agency relationship operates.
- To provide students with a thorough understanding of the sources of agency power, and especially how this area has developed and transformed under the Constitution.
- To ensure that students are aware of the legal duties imposed upon principals and agents and the consequences that may flow if these duties are breached.
- To make students aware of the special requirements that attach to certain special forms of agency relationships, especially those regulated by statute.
- To assist students in being able to identify and solve authentic legal problems with regard to agency contracts.

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<sup>1</sup> Thank you to Professor Glover for providing me with the course outline and course material which he has refined over the years. Thank him again for his guidance and insights in preparation for this course.

- To familiarise students with legal concepts and terminology commonly encountered in the law of agency.

### **Credit Value**

5 Credits at NQF level 8.

### **Assumptions of Prior Learning**

In order to successfully complete this portion of the course, students must be able to:

- Write and communicate in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Have a working knowledge of the general principles of the law of contract.
- Be capable of independent learning.
- Read, analyse and extract principles from law reports and other source material.
- Understand the system of judicial precedent and the important role precedent plays in private law.
- Have a developed understanding of legal problem-solving techniques.

### **OUTCOMES**

#### **Critical Outcomes**

Students will be able to:

- identify and solve practical legal problems in an ethical way that respects the rule of law and the values of our constitutional system.
- organise and manage themselves and their work load.
- collect, describe, understand, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- communicate effectively in class debate and written assignments.
- use technology in legal research and learning.

#### **Intended Specific Outcomes for Agency**

For successful completion of this portion of the course students should be able to achieve the following outcomes.

Students must be able to:

- Understand, analyse and evaluate the essential elements of agency, and how the agency relationship operates.
- Understand, analyse and evaluate the sources of agency power.
- Understand, analyse and evaluate the legal duties that are imposed upon principals and agents in terms of the principal-agent relationship, as well as the consequences if such duties are breached.

- (d) Understand, analyse and evaluate the relationship between a principal and the third party.
- (e) Understand, analyse and evaluate the relationship between an agent and the third party.
- (f) Understand, analyse and evaluate the features of certain special forms of agency relationship, especially those regulated by statute.
- (g) Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.

## **TEACHING METHOD**

The course will be presented by means of *viva voce* lectures. There is a handout for the course, which the students receive, and which provides the basic structure and material for the lectured course. In lectures, the substantive law (both common law and statute law) will be discussed, leading precedents from the case law will be analysed, and the views of leading academic commentators will be explained. Occasionally, students will be expected to explain case law or statutes and consider practical questions in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. Lectures are compulsory. The normal Faculty regulations concerning lecture attendance and DP certificates apply (please refer to the Handbook). Students are expected to keep their own records of the number of lectures that they have not attended. There are no tutorials in this portion of the course.

## **COURSE CONTENT**

### **A INTRODUCTION: THE NATURE OF AGENCY**

Agency  
Empowered and unempowered agents  
Representation  
Authority

The process of authorisation

The contract of mandate  
The contract of employment  
Independent agents  
Composite contracts

### **B SOME PRELIMINARY ISSUES RELATING TO AGENCY POWER**

Capacity  
Legality  
Possibility of performance  
Formalities  
The power to buy and sell land

## C THE ORIGIN AND EXTENT OF AGENCY POWER

Actual authority

Express authority

Tacit authority

By operation of law

Ratification

Apparent authority and the relationship to estoppel

## D THE OBLIGATIONS OF THE AGENT

The agent's residual obligations are: (1) to do what he or she has been instructed to do; (2) to exercise care, skill and diligence; (3) to impart information; (4) to advise; (5) to act in good faith; (6) to account.

## E THE OBLIGATIONS OF THE PRINCIPAL

The principal's residual obligations are: (1) to pay the agreed remuneration, if any; (2) to account; and (3) if the agent is a mandatary, to indemnify the agent in certain instances.

## F RELATIONS BETWEEN THE PRINCIPAL AND THIRD PERSONS

Named principals, unnamed principals and undisclosed principals

Misrepresentation and non-disclosure

## G RELATIONS BETWEEN THE AGENT AND THIRD PERSONS

## H THE TERMINATION OF THE POWER TO ACT AS AGENT ON BEHALF OF A PRINCIPAL

### RESOURCES

- AJ Kerr *The Law of Agency* 4th edition (2006)
- *LAWSA* Vol 1 'Agency and Representation' and Vol 17 'Mandate and Negotiorum Gestio'
- *De Villiers & Macintosh: The Law of Agency in South Africa* by Jonathan Silke 3<sup>rd</sup> ed, Juta & Co (1981)
- Robert Sharrock *Business Transactions Law* 8<sup>th</sup> ed, Juta & Co (2011)
- Du Bois *et al Wille's Principles of South African Law* 9<sup>th</sup> ed, Juta & Co (2007).

### STUDENT ASSESSMENT

Specific Outcomes (On completion of this course, the student should be able to :)	Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to :)	Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to :)
Understand, analyse and evaluate the essential elements of agency, and how the agency relationship operates.	<ul style="list-style-type: none"> <li>- Explain and analyse the essential elements agency, and how agency, mandate and representation differ.</li> <li>- Explain, analyse, compare/contrast, distinguish the requirements that have to be satisfied for these elements to exist.</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>
Understand, analyse and evaluate the sources of agency power.	<ul style="list-style-type: none"> <li>- Identify, explain, and be able to evaluate critically the sources of agency power.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what the law is with regard to these various sources of power.</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>
Understand, analyse and evaluate the legal duties that are imposed upon principals and agents, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> <li>- Discuss the various legal duties.</li> <li>- Explain and evaluate critically how these duties impact upon principals and agents respectively.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what these legal duties are.</li> <li>- Explain and apply the remedies that may flow if these duties are breached.</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>
Understand, analyse and evaluate the relationship between a principal and the third party.	<ul style="list-style-type: none"> <li>- Explain and evaluate critically how the law views this relationship.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what these legal duties are.</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>
Understand, analyse and evaluate the relationship between an agent and the third party.	<ul style="list-style-type: none"> <li>- Explain and evaluate critically how the law views this relationship.</li> <li>- Demonstrate a critical understanding of the court decisions that have</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>

	authoritatively determined what these legal duties are.	
Understand, analyse and evaluate the features of certain special forms of agency relationship, especially those regulated by statute.	<ul style="list-style-type: none"> <li>- Identify and discuss the important or unique features of special/common agency relationship.</li> <li>- Critically evaluate the legal requirements that attach to certain common forms of agency relationships regulated by statutory enactments and constitutional principles.</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- Select and discuss the relevant law, and apply or evaluate the relevant legal precedents with regard to that issue.</li> <li>- 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 or propose a new solution to the problem.</li> </ul>	<ul style="list-style-type: none"> <li>- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents, legal outcomes are predicted, and new or novel solutions are suggested or proposed, if necessary.</li> </ul>

### Assessment Strategy

The final mark for the Agency module is comprised of the following components:

Exam:	35 marks out of a 70-mark exam.
Course work:	15-mark test out of a course work mark of 30.

These totals will be added to the results in the Insurance and Credit Agreement modules and converted into a percentage (see below).

### Test

There will be one test for the Agency component of this course. This will be out of 15 marks. The test will contain questions equivalent to that which may be found in the November summative assessment and will require the students to apply their knowledge to solve a legal problem.

### Examination

One two-hour examination will be done in November. This will be out of 70 marks. All questions will be compulsory. The questions will require students to be able to explain legal rules and principles in a theoretical sense, to explain case law on leading precedents, as well as to apply their knowledge to solving practical problems in

authentic contexts. An external examiner assesses the quality of both the examination paper and the students' answers.

## **B INSURANCE**

### **INTRODUCTION**

#### **Overview**

The purpose of the Insurance Law portion of the course is to provide insight into the nature and function of the law of insurance in South Africa. More particularly:

- To provide students with an understanding of the nature and essential elements of a contract of insurance.
- To provide students with an understanding of how the insurance contract differs from other forms of contract, and especially how this area has developed and transformed under the Constitution..
- To provide students with an understanding of the legal effects of a contract of insurance.
- To ensure that students are aware of the legal duties imposed upon both the insurer and the insured, as well as of the consequences that may flow if these duties are breached.
- To make students aware of the special requirements imposed by statute that attach to certain forms of insurance contract.

#### **Credit Value**

3.5 Credits.

#### **Assumptions of Prior Learning**

In order to successfully complete this portion of the course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Have a working knowledge of the general principles of the law of insurance.
- Be capable of independent learning.
- Read, analyse and extract principles from law reports and other source material.
- Understand the system of judicial precedent, and the important role precedent plays in private law.
- Have a developed understanding of legal problem-solving techniques.

### **OUTCOMES**

#### **Critical Outcomes**

Students will be able to:

- (a) identify and solve practical legal problems in an ethical way that respects the rule of law and the values of our constitutional system.
- (b) organise and manage themselves and their work load.
- (c) collect, describe, understand, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.
- (e) use technology in legal research and learning.

### **Intended Specific Outcomes for Insurance**

The Insurance portion of the course is designed so that students successfully completing this portion of the course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand, analyse and evaluate the essential elements of a valid contract of insurance.
- (b) Understand, analyse and evaluate some of the key legal consequences of entering into a contract of insurance.
- (c) Understand, analyse and evaluate the legal duties that are imposed upon the insurer and the insured, as well as the consequences that flow if these duties are breached.
- (d) Understand, analyse and evaluate how certain statutes regulate insurance law.
- (e) Apply the knowledge acquired during the course to solve practical problems with regard to insurance contracts.

### **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is a handout for the course, which the students receive, and which provides the basic structure and material for the lectured course. In lectures, the substantive law (both common law and statute law) will be discussed, leading precedents from the case law will be analysed, and the views of leading academic commentators will be explained. Occasionally, students will be expected to explain case law or statutes and consider practical questions in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. Lectures are compulsory. The normal Faculty regulations concerning lecture attendance and DP certificates apply (please refer to the Handbook). Students are expected to keep their own records of the number of lectures that they have not attended. There are no tutorials in this portion of the course.

### **COURSE CONTENT**

- A. Introduction
- B. Formation of the Insurance Contract
- C. Insurable Interest



- D. Duty to Disclose Material Facts
- E. Warranties
- F. Duration of the Insurance Contract
- G. The Agent
- H. The Risk
- I. Subrogation
- J. Reinstatement
- K. Loss
- L. Over-insurance and Under-insurance
- M. Double Insurance
- N. Common types of insurance clause
- O. Prescription of Claims
- P. Dispute Resolution

## RESOURCES

The core reading and study material for this course are the leading judgments and statutory or regulatory instruments on the aspects of the law of insurance to be studied. These cases may be found in the law reports, which may be accessed in the Law Library, both in paper and electronic form. For a full list of cases, see the course handout. The statutes are accessible either in printed or electronic form.

As far as textbooks are concerned, the main important texts in SA are:

- Reinecke et al *General Principles of Insurance Law* 2 ed (2013), LexisNexis Butterworths: Durban (this is the book reproducing the LAWSA chapter referred to below). We are hoping for a new ed soon, but it is not likely to be out before 2021.
- Reinecke et al 'Insurance' in WA Joubert (ed) *The Law of South Africa* Vol 12(1) and (2) 2 ed (2012), Butterworths: Durban.
- Millard *Modern Insurance Law in South Africa* (2014) Juta & Co Ltd: Cape Town
- Davis *Gordon and Getz: The South African Law of Insurance* (1993), 4th edition, Juta: Cape Town. (Now obviously very old and dated, but occasionally referred to.)

## STUDENT ASSESSMENT

Specific Outcomes (On completion of this course, the student should be able to:)	Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to :)	Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)
Understand, analyse and evaluate the essential elements of a valid contract of insurance.	<ul style="list-style-type: none"> <li>- Define and discuss the essential elements of a contract of insurance.</li> <li>- Explain and critically analyse the requirements that have to be satisfied for these elements to exist.</li> <li>- Demonstrate a critical understanding of the court</li> </ul>	<ul style="list-style-type: none"> <li>- Use all these techniques in presenting written answers to authentic problem-type scenario questions.</li> </ul>

	decisions that have authoritatively determined what the various elements and requirements are.	
Understand, analyse and evaluate some of the key legal consequences of entering into a contract of insurance.	<ul style="list-style-type: none"> <li>- Define and discuss these legal consequences</li> <li>- Explain, analyse, compare/contrast, distinguish the requirements that have to be satisfied where these consequences ensue.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what the consequences are.</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.
Understand, analyse and evaluate the legal duties that are imposed upon the insurer and the insured, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> <li>- Define and discuss these duties and their remedies</li> <li>- Explain and analyse critically these duties and their respective remedies</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what the various elements and requirements are.</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.
Understand, analyse and evaluate how certain statutes regulate insurance law.	<ul style="list-style-type: none"> <li>- Explain the important or unique features of the Short-Term and Long-Term Insurance Acts and the Insurance Act.</li> <li>- Discuss the legal requirements that attach to contracts concluded in terms of this legislation.</li> <li>- Critically analyse how the legislation impacts on real-life problems</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.
Apply the knowledge acquired during the course to solve practical problems with regard to sale contracts.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- Select and discuss the relevant law, and apply or evaluate the relevant legal precedents with regard to that issue.</li> <li>- 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, or propose a new solution to the problem.</li> </ul>	- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents, legal outcomes are predicted, and new or novel solutions are suggested or proposed, if necessary.

## **Assessment strategy**

The final mark for the Insurance module is comprised of the following components:

Exam:	20 marks out of a 70-mark exam.
Course work:	15 marks out of 30.

These totals will be added to the results in the Insurance and Credit Agreement modules and converted into a percentage.

## **Test**

There will be one test for the Insurance component of this course. This will be out of 15 marks. The test will contain questions equivalent to that which may be found in the November summative assessment, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory.

## **Examination**

One two-hour examination will be done in November. This will be out of 70 marks. All questions will be compulsory. The questions will require students to be able to explain legal rules and principles in a theoretical sense, to explain case law on leading precedents, as well as to apply their knowledge to solving practical problems in authentic contexts. An external examiner assesses the quality of both the examination paper and the students' answers.

## **EVALUATION**

This course is evaluated as part of the global evaluation of LLB courses conducted at the end of each semester.

## **C CREDIT AGREEMENTS**

### **Overview**

The purpose of the credit agreements portion of the course is to provide insight into the nature and function of credit law in South Africa. More particularly:

- To provide the students with an understanding of the core elements of credit agreements as defined in the National Credit Act.
- To ensure students are aware of the consequences of concluding a credit agreement.
- To ensure students are aware of some of the key practical consequences of the National Credit Act in so far as debt review and summary judgment is concerned.

### **Credit Value**

1.5 Credits.

## **Assumptions of Prior Learning**

In order successfully to complete this portion of the course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Have a working knowledge of the general principles of the law of contract.
- Be capable of independent learning.
- Read, analyse and extract principles from law reports and other source material.
- Understand the system of judicial precedent, and the important role precedent plays in private law.
- Have a developed understanding of legal problem-solving techniques.

## **OUTCOMES**

### **Critical Outcomes**

Students will be able to:

- (a) identify and solve practical legal problems in an ethical way that respects the rule of law and the values of our constitutional system.
- (b) organise and manage themselves and their work load.
- (c) collect, describe, understand, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.
- (e) use technology in legal research and learning.

### **Intended Specific Outcomes for Credit Agreements**

The Credit Agreement portion of the course is designed so that students successfully completing this portion of the course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand, analyse and evaluate the essential features of a credit agreement.
- (b) Understand, analyse and evaluate what the consequences are of concluding a credit agreement
- (c) Understand, analyse and evaluate some of the key practical consequences of dealing with a credit agreement.
- (d) Apply the knowledge acquired during the course to solve practical problems with regard to credit agreements.

## **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is a handout for the course, which the students receive, and which provides the basic structure and material

for the lectured course. In lectures, the substantive law (both common law and statute law) will be discussed, leading precedents from the case law will be analysed, and the views of leading academic commentators will be explained. Occasionally, students will be expected to explain case law or statutes and consider practical questions in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. Lectures are compulsory. The normal Faculty regulations concerning lecture attendance and DP certificates apply (please refer to the Handbook). Students are expected to keep their own records of the number of lectures that they have not attended. There are no tutorials in this portion of the course.

## COURSE CONTENT

1. Definitions of types of credit transaction
2. The credit contract
3. The issuing of credit, and reckless credit
4. Debt review procedures

## RESOURCES

The core reading and study material for this course are the leading judgments and statutes on the aspects of the law of insurance to be studied. These cases may be found in the law reports, which may be accessed through the Law Library, both in paper and electronic form. For a full list of cases, see the course handout. The statutes are accessible either in printed or electronic form.

As far as textbooks are concerned, recommended texts are:

Otto & Otto *The National Credit Act Explained* 4 ed (LexisNexis, 2016)

Otto et al *Guide to the National Credit Act* [looseleaf] (LexisNexis, OS 2008).

Kelly-Louw *Consumer Credit Regulation in South Africa* (2012) Juta & Co Ltd: Cape Town.

## STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to:)</b>	<b>Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)</b>
Understand, analyse and evaluate the key features of a credit agreement	<ul style="list-style-type: none"> <li>- Define and discuss the various types of credit agreements.</li> <li>- Explain, analyse, compare/contrast, distinguish the requirements that have to be satisfied for these various agreements to exist.</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.

Understand, analyse and evaluate what the consequences are of concluding a credit agreement.	<ul style="list-style-type: none"> <li>- Critically discuss some of the important consequences of entering into a credit contract, and the legal problems that can be associated with these issues.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what the law is with regard to these legal consequences.</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.
Understand, analyse and evaluate some of the key practical consequences of dealing with a credit agreement.	<ul style="list-style-type: none"> <li>- Explain and evaluate debt review procedures and reckless credit.</li> <li>- Demonstrate a critical understanding of the court decisions that have authoritatively determined what the relevant legal principles are.</li> </ul>	- Use all these techniques in presenting written answers to authentic problem-type scenario questions.
Apply the knowledge acquired during the course to solve practical problems with regard to credit agreements.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- Select and discuss the relevant law, and apply or evaluate the relevant legal precedents with regard to that issue.</li> <li>- 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, or propose a new solution to the problem.</li> </ul>	- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents, legal outcomes are predicted, and new or novel solutions are suggested or proposed, if necessary.

### **Assessment strategy**

The final mark for the Credit Agreements module is comprised of the following components:

Summative:	15 marks out of a 70-mark summative.
Course work:	None.

These totals will be added to the results in the Insurance and Credit Agreement modules and converted into a percentage.

### **Examination**

One two-hour examination will be done in November. This will be out of 70 marks. All questions will be compulsory. The questions will require students to be able to explain legal rules and principles in a theoretical sense, to explain case law on leading precedents, as well as to apply their knowledge to solving practical problems in authentic contexts. An external examiner assesses the quality of both the examination paper and the students' answers.

**EVALUATION**

This course is evaluated as part of the global evaluation of LLB courses conducted at the end of each semester.