

# **COMMERCIAL LAW 201: PAPER 1: SALE, LEASE AND CARRIAGE**

## **1. INTRODUCTION**

Welcome to Commercial Law 201, Paper 1 in 2011. This handout supplements your general information handout for Commercial Law 2. It contains general information regarding Paper 1 and includes the three modules for this course, namely:

- (a) The Law of Sale;
- (b) The Law of Lease; and
- (c) The Law of Carriage.

### **1.1 Overview**

The law of sale, lease and carriage is one of two Commercial Law courses offered in the first semester to second year level students registered in the Faculty of Commerce (COL 201, paper 1 and COL 202, paper 2). Approximately 70% of the course is dedicated to the law of sale and lease in equal measure, with carriage taking up the remainder of course. The purpose and outcomes of the course follow and expand upon the South African Institute for Chartered Accountants' (SAICA) recommendations for law courses.

In general, the course aims to provide insight into the nature and function of the law of sale, lease and carriage in South Africa. In particular, the course aims to ensure that students have insight into the principles governing trading transactions and the rights and responsibilities of parties to a contract of purchase and sale, letting and hiring and carriage. In addition, the purpose of the course is to introduce students to the relevant legislation relating to each topic and to give them an understanding of some of the more common legal situations which can arise in a sale, carriage or lease relationship and how situations are dealt with by the law.

### **1.2 Credit Value**

7.5 Credits.

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

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

- Be capable of writing and communicating in coherent English.
- Have a basic working knowledge of the South African legal system, legal terminology and the general principles of contract learnt and applied in Commercial Law 101.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library and on the intranet.
- Be capable of independent learning.

## **2. OUTCOMES**

### **2.1 Critical Outcomes**

Students will be able to:

- identify and solve practical legal problems.
- organise and manage themselves and their work load.
- communicate effectively in class debate and class assessments.
- use technology in legal research.
- analyse and evaluate information.

## **2.2 Intended Specific Outcomes**

The course is designed so that students successfully completing this course should be able to achieve the following outcomes:

- To understand and explain the essential elements of a valid contract of sale, lease and carriage.
- To understand and explain some of the key legal consequences of entering into a contract of sale, lease and carriage.
- To understand and explain the legal duties that are imposed upon parties, and the consequences that flow if these duties are breached.
- Apply the knowledge acquired during the course to solve practical problems with regard to specific contracts.
- To recognise and explain the features of special contracts, particularly those regulated by statutes.

## **3. TEACHING METHODS**

Commercial Law 201 Paper 1 consists of three different sections, namely, the law of sale, the law of lease and the law of carriage – taught in the first semester by **Ms Helen Kruuse**. Separate modules (attached) are provided for each section of the course. These modules set out the basic structure of the topics to be covered in each section. Students are expected to read ahead in the module for the next lecture in order to acquire a basic familiarity with the relevant topic. Lectures will be presented by means of *viva voce* lectures and PowerPoint presentations will be utilised where appropriate. It is important that students note that the modules provided are not comprehensive. Some topics require responses to questions posed in the module, while some topics will be covered orally in class only. Students are therefore expected to take their own notes in lectures to supplement each module. Occasionally, students will be expected to explain case law and consider practical questions in class.

## **4. ASSESSMENT**

There will be two formal tests for Commercial Law 201: Paper 1 which will make up the course's class work component. The test will be combined with Commercial Law 201: Paper 2. For the paper 1 component, the test usually consists of 10 multiple choice questions (MCQs) and one long question in problem form. Please refer to the general information handout for information regarding dates and venues.

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 June 2011. The paper will contain three questions of which students are required to answer two. One question will take the form of a multiple choice question paper to which negative marking will be applied, and the remaining two questions will be theory / problem type questions.

<b>Specific outcomes</b>	<b>Assessment criteria</b>	<b>Assessment tasks</b>
To understand and explain the essential elements of a valid contract of sale, lease and carriage.	<ul style="list-style-type: none"> <li>• Define and explain the essential elements of the specific contracts studied in the course.</li> <li>• Apply any relevant statutory and common law principles to specific contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• MCQ's in tests and examinations.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
To understand and explain the legal obligations that are imposed upon parties to specific contracts, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> <li>• Define and explain the various legal duties of parties to specific contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• MCQ's in tests and examinations.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to specific contracts.	<ul style="list-style-type: none"> <li>• Identify and discuss the relevant legal problem or issue.</li> <li>• Apply the applicable law to the legal problem or issue.</li> <li>• Conclude with reference to remedies available, if appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• MCQ's in tests and examinations.</li> <li>• Problem and theory questions in tests and examinations.</li> </ul>
To recognise and explain the features of special contracts, particularly those regulated by statute.	<ul style="list-style-type: none"> <li>• Discuss the important or unique features of special contracts.</li> <li>• Discuss the legal requirements that attach to certain contracts regulated by statutory enactments.</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning.</li> <li>• MCQ's in tests and examinations.</li> </ul> <p>Problem and theory questions in tests and examinations.</p>

## 5. RESOURCES

Students will be provided with a module for each section of the course which will in turn include a list of recommended texts. 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). 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.

J Scott (ed)	<i>The Law of Commerce in South Africa</i> (2009) OUP: Cape Town.
D Collier-Reed and K Lehmann (ed)	<i>Basic Principles of Business Law</i> (2006) LexisNexis: South Africa.
Govindjee <i>et al</i>	<i>Commercial Law 2: Fresh Perspectives</i> (2007) Pearson: South Africa.
Govindjee <i>et al</i>	<i>Commercial Law 1: Fresh Perspectives</i> (2006) Pearson: South Africa.
Nagel <i>et al</i>	<i>Commercial Law</i> (2006) 3 ed Lexisnexis Butterworths: Durban.
Visser <i>et al</i>	<i>Gibson: South African Mercantile and Company Law</i> (2000) 8 ed Juta: Cape Town.

## COURSE CONTENT

### LAW OF SALE

**Section 1 - The definition and essentials of the contract**

**Section 2 - The legal effect of the contract: ownership, risk and benefit**

**Section 3 - Seller's Duties and Buyer's Remedies**

**Section 4 - Buyer's Duties and Seller's Remedies**

**Section 5 - Sales regulated by Statute**

### LAW OF LEASE

**Section 1 - Introduction: Definition, Essentials and Formalities of a contract of lease**

**Section 2 - The lessor's obligations and the lessee's remedies**

**Section 3 - The lessee's obligations and the lessor's remedies**

**Section 4 - The legal position of the lessee: subletting, cession, assignment, *Huur gaat voor koop***

**Section 5 - Termination of a lease agreement**

**Section 6 - Renewal of a lease**

### LAW OF CARRIAGE

**Section 1 - Introduction: Purpose and importance of the law of carriage**

**Section 2 - The Common Law Contract of Carriage: Definition, Parties and the Praetor's Edict**

**Section 3 - The obligations of the consignor and the carrier**

**Section 4 - Commencement, termination and limitation of liability and remedies**

**Section 5 - Carriage by Road and Rail**

**Section 6 - Carriage by Sea**

**Section 7 - Carriage by Air**