



RHODES UNIVERSITY

**COMMERCIAL LAW 201**  
**PAPER 2**  
**THE ADMINISTRATION OF DECEASED**  
**ESTATES AND**  
**THE LAW OF INSOLVENCY**  
**AND WINDING-UP OF COMPANIES**  
**AND CLOSE CORPORATIONS**  
**2011**

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## **1. INTRODUCTION**

### **1.1. Overview**

The Law of Administration of Deceased Estates and the Law of Insolvency, Winding-up of Companies and Close Corporations is a part of the Commercial Law 201 course (Col 201 Paper 2) offered at second year level to students registered in the Faculty of Commerce. The major themes of the course are the consequences of death and insolvency and the procedure attached to the administration of a deceased estate, an insolvent estate and companies and close corporations in liquidation.

The purpose of the course is to familiarise students with the scope and effect of death, insolvency and liquidation in South African law.

## **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:

- Describe and apply the basic legal principles of insolvency, winding-up and the administration of deceased estates;

- List, explain and demonstrate an understanding of the procedural aspects applicable to sequestration, liquidation and deceased estates; and
- Accurately use legal concepts and terminology related to the law of insolvency, winding-up and deceased estates.

### **3. TEACHING METHODS**

A fairly comprehensive module and bibliography are provided for this part of the course. 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 are conducted in a structured but discursive manner allowing for questions and discussion. 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 lectures that are not comprehensively dealt with in the module.

### **4. ASSESSMENT**

Please refer to the Commercial Law 2011 General Information handout for full details of the tests which will be written during the course. Two tests will be written in the first semester and it is a DP requirement that both tests are written unless students have a valid leave of absence. Please note that the test marks amount to 30% of the final mark obtained for Commercial Law 201.

The examination for Commercial Law 201 Paper 2 will be written in June 2011. The paper will contain three questions of which students are required to answer two. One question will take the form of an MCQ (multiple choice question) to which negative marking will be applied, and the remaining two questions will be theory/problem type questions. The content of the paper will be divided between insolvency and deceased estates.

Specific outcomes	Assessment criteria	Assessment tasks
<ul style="list-style-type: none"> <li>Describe and apply the basic legal principles of insolvency, liquidation and deceased estates</li> </ul>	<ul style="list-style-type: none"> <li>Identify and distinguish between the legal principles applicable to insolvency, liquidation and deceased estates with reference to factual situations</li> <li>Apply statutory and common law principles to factual situations</li> <li>Recognise, compare and contrast legal concepts in relation to insolvency, liquidation and deceased estates</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning (formative)</li> <li>MCQs in tests and examination (summative)</li> <li>Problem and theory questions in tests and examination (summative)</li> </ul>
<ul style="list-style-type: none"> <li>List, explain and demonstrate an understanding of the procedural aspects applicable to sequestration, liquidation and deceased estates</li> </ul>	<ul style="list-style-type: none"> <li>Describe and explain the procedure involved in administering a sequestrated, liquidated and deceased estate</li> <li>Identify the relevant legislation from which the required</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning (formative)</li> <li>MCQs in tests and examination (summative)</li> <li>Problem and theory questions in tests and examination (summative)</li> </ul>

	procedure is drawn	
<ul style="list-style-type: none"> <li>• Accurately use legal concepts and terminology related to the law of insolvency, liquidation and deceased estates</li> </ul>	<ul style="list-style-type: none"> <li>• Identify and define relevant legal concepts in insolvency, liquidation and deceased estates</li> <li>• Use of appropriate and accurate terminology in insolvency, liquidation and the administration of deceased estates</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• MCQs in tests and examination (summative)</li> <li>• Problem and theory questions in tests and examination (summative)</li> </ul>

## 5. BIBLIOGRAPHY

There are no prescribed texts for this course but you will need to consult text books to supplement and consolidate your notes.

The following reading is compulsory for the successful completion of this course:

- V Etsebeth, Chapter 4, Insolvency Law, in A Govindjee *et al Commercial Law 2 Fresh Perspectives* (2007), Pearson Education and Prentice Hall: Cape Town
- S Driver, Chapter 5, Deceased Estates, in A Govindjee *et al Commercial Law 2 Fresh Perspectives* (2007), Pearson Education and Prentice Hall: Cape Town

The following works are available in the Law Library on short loan:

- W Abrie, C R Graham, M C Schoeman-Malan and P de W van der Spuy *Deceased Estates* (2003) 5<sup>th</sup> ed, ProPlus Publishers: Lynnwood

Ridge

- De Waal *et al Law of Succession Students Handbook* (2003) 3<sup>rd</sup> ed, Juta and Co: Cape Town
- Sharrock *et al Hockly's Insolvency Law* (2006) 8<sup>th</sup> ed, Juta and Co: Cape Town

The above texts contain most of the relevant legislation as well as precedents of documents and liquidation and distribution accounts which you will need to consult from time to time.

This course also requires reading reported case law and there are full sets of the South African Law Reports in the Main Library and the Law Library.

Legislation can also be accessed on the internet. Go to the RU library webpage ([www.ru.ac.za/library](http://www.ru.ac.za/library)) and then select research databases and subject gateways and then select the NetLaw database from the alphabetical list.

The Master of the High Court has a website which is a very useful tool for practitioners and students in the administration of deceased and insolvent estates. All the relevant forms which are required to be completed when reporting a deceased estate are available there in addition to other helpful information regarding the Master's functions.

The website address is: [www.doj.gov.za/master/m\\_main.htm](http://www.doj.gov.za/master/m_main.htm)

## **COURSE OUTLINE**

### **ADMINISTRATION OF DECEASED ESTATES**

1. Introduction
2. Terms relevant to the administration of deceased estates
3. Testate succession
  - 3.1. Methods of executing a valid will
  - 3.2. Joint wills and massing
  - 3.3. Substitution
  - 3.4. Usufructs
  - 3.5. Testamentary conditions
  - 3.6. Trusts
4. Intestate succession
5. Capacity to inherit
6. Overview of the administration of a deceased estate
  - 6.1. Reporting the estate
  - 6.2. Administering the estate

### **THE LAW OF INSOLVENCY, WINDING-UP OF COMPANIES AND CLOSE CORPORATIONS**

1. Introduction
2. Obtaining a sequestration order
3. The effects of sequestration
4. Impeachable dispositions and void transactions
5. Administration of insolvent estates

6. Realisation and distribution of assets
7. Rehabilitation
8. Winding-up of Companies and Close Corporations
9. The process of winding-up
10. Judicial management