

# COURSE OUTLINE

COMPANY LAW 'A'

FEBRUARY 2012

## GENERAL INFORMATION

### PURPOSE

This course seeks to expose the student to the various business forms and company groupings in South Africa, with special emphasis on the recent changes as a result of the coming into force in 2011 of the new Companies Act 71 of 2008. Relevant aspects relating to meetings, resolutions and corporate personnel will also be discussed.

### ASSUMPTION OF PRIOR LEARNING

Before you start this course, you must be able to:

- Write and communicate in coherent English,
- Demonstrate a thorough knowledge of the general principles of the law of contract,
- Demonstrate a working understanding of the law of agency,
- Be capable of independent learning,
- Understand the system of judicial precedent and the important role precedent plays in our law,
- Read, analyse and extract principles from law reports and other source material, and
- Apply legal problem solving techniques to practical situations.

### CRITICAL OUTCOMES

Apart from the knowledge and skill that relate directly to Company Law, the following skills are central to the study and practice of law which the course intends to enhance. By the end of this course you should be able to:

- *Identify* and *solve* practical legal problems,
- *Organise* and *manage* yourself and your work load,
- *Analyse* and *evaluate* the information conveyed during lectures and contained in the course handout,
- *Communicate* effectively in class debate, discussions, seminars and written examinations,
- Use technology,
- Recognise problem-solving contexts in company law.

### **SPECIFIC OUTCOMES**

By the end of this course, students will be able to achieve the following outcomes:

- Provide an overview of the concepts and principles of company law in South Africa.
- Identify and distinguish between the essential elements of each business form.
- Evaluate and appreciate the comparative advantage(s) and disadvantage(s) of each business medium.
- Provide an overview of the rights, duties, obligations and liabilities of the parties to the various business enterprises.
- Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises.

### **TEACHING METHODS AND LEARNING RESPONSIBILITY OF STUDENTS**

From the outset, this course aims to analyse and critique the law in its present state and consider the imminent changes to this area of law. To this end a combination of formal lecturing and class discussions will be conducted. Emphasis will fall on discussing and evaluating relevant case law and legislation and the practical implications of the material studies.

Students are expected to take responsibility for their own learning by reading and preparing the course material provided. The required reading for each topic is contained in the course outline and students are advised to keep up to date with cases, legislation and relevant textbook and journal articles.

**STUDENT ASSESSMENT**

| <p><b>SPECIFIC OUTCOMES</b></p> <p><b><u>On completion of this course, you should be able to:</u></b></p> | <p><b>ASSESSMENT CRITERIA</b><br/>(What evidence must you provide to show that you are competent?)</p> <p><b><u>You must be able to:</u></b></p>   | <p><b>ASSESSMENT TASKS</b></p> <p><b><u>The evidence will be gathered in:</u></b></p>   |
|---|--|---|
| <p>Provide an overview of the concepts and principles of Company Law in South Africa.</p>                 | <ul style="list-style-type: none"> <li>• Apply statutory and common law principles.</li> <li>• Identify critical aspects of case law.</li> <li>• Demonstrate and understanding of the concepts and principles contained in the case law and statutes.</li> </ul>   | <ul style="list-style-type: none"> <li>• Class discussion and seminars</li> <li>• Class assignments</li> <li>• Test</li> <li>• Examination</li> </ul> |
| <p>Identify and distinguish between the essential elements of each business form.</p>                     | <ul style="list-style-type: none"> <li>• Describe and explain the various business structures.</li> <li>• Identify the relevant legislative provisions.</li> <li>• Identify critical aspects of case law regarding each business form.</li> <li>• Demonstrate an understanding of the concepts and principles contained in the case law and statutes.</li> </ul> | <ul style="list-style-type: none"> <li>• Class discussion and seminars</li> <li>• Class assignments</li> <li>• Test</li> <li>• Examination</li> </ul> |
| <p>Evaluate and understand the comparative advantage(s) and disadvantage(s) of each business medium.</p>  | <ul style="list-style-type: none"> <li>• Compare the business structures in respect of the limitations and requirements imposed by statute and the common law.</li> <li>• Compare the business structures in respect of the advantages associated with each structure having regard to practical situations.</li> </ul>  | <ul style="list-style-type: none"> <li>• Class discussion and seminars</li> <li>• Class assignments</li> <li>• Test</li> <li>• Examination</li> </ul> |

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| <p>Provide an overview of the rights, duties, obligations and liabilities of the parties to the various business enterprises.</p> | <ul style="list-style-type: none"> <li>• Describe the rights, duties, obligations and liabilities of the parties to the various business enterprises.</li> <li>• Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of the parties to the various business forms.</li> <li>• Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations</li> </ul> | <ul style="list-style-type: none"> <li>• Class discussion and seminars</li> <li>• Class assignments</li> <li>• Test</li> <li>• Examination</li> </ul> |
| <p>Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises.</p>            | <ul style="list-style-type: none"> <li>• Identify the relevant legal problem or issue.</li> <li>• State the relevant law, and discuss 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.</li> </ul>   | <ul style="list-style-type: none"> <li>• Tests</li> <li>• Examination</li> </ul>  |

**ASSESSMENT STRATEGY**

The class work component of the course amounts to 30% of the final mark and comprises of one test and three short assignments.

The remaining 70% of the final mark comprises of one two hour examination which will contain:

- Problem questions which require the application of statute, common law and case law to solve practical issues;
- Case notes; and
- Theory type questions, in which students are required to describe, explain and critically evaluate the current law.

## **DP CERTIFICATE**

Attendance at lectures is compulsory and a register will be taken during each lecture. It is accepted that the ideal of 100% attendance is generally not attainable, however, students may miss no more than five lectures for this course. Students are responsible for collecting, retaining and presenting all relevant documents (doctor's letters etc) in respect of the lectures missed and filling out the necessary LOA (leave of absence) form.

Please be reminded that signing for another student constitutes fraud and any student caught doing so will be prosecuted in terms of the student disciplinary code.

A student who misses more than five lectures over in the course will not have met the course requirements and as a result such student's DP certificate will be removed and he/she will not be allowed to write the examination.

## **READING MATERIAL**

### Prescribed texts:

- Cassim *et al* *Contemporary Company Law* 2nd edition, Juta (2012)
- Companies Act 71 of 2008

Note that the prescribed textbook is scheduled to be published during the week commencing 13 February 2012. It is my intention to ask students to sign a form authorising the cost of the book to be debited to their student fees accounts, and then to place a bulk order directly with the publisher.

## COURSE OUTLINE

### 1. TYPES AND CATEGORIES OF COMPANIES

- 1.1. Non-Profit Company
- 1.2. Profit Company
  - 1.2.1. State Owned Company
  - 1.2.2. Private Company
  - 1.2.3. Personal Liability Company
  - 1.2.4. Public Company
- 1.3. External Company

### 2. CLOSE CORPORATIONS

- 2.1. Nature, Characteristics, Advantages and Disadvantages
- 2.2. Membership and Member's Interest
- 2.3. Fiduciary Duties and Duty of Care and Skill
- 2.4. Remedies for Members and the CC
- 2.5. Personal Liability for Debts
- 2.6. The Effect of the 2008 Companies Act

### 3. THE CORPORATE ENTITY

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- 3.1. The Effect of the Status of Corporate Entity
- 3.2. Piercing the Corporate Veil
  - 3.2.1. Companies Act of 2008
  - 3.2.2. Case Law

### 4. FORMATION OF THE COMPANY

- 4.1. Introduction
- 4.2. Name of the Company
- 4.3. Right to Incorporate
- 4.4. Registration of the Company
- 4.5. Memorandum of Incorporation
- 4.6. The Effect of the 2008 Companies Act

## **5. OFFICE BEARERS AND DIVISION OF CORPORATE FUNCTIONS**

- 5.1. Employees
- 5.2. Prescribed Officers
  - 5.2.1. Secretary
  - 5.2.2. Manager
  - 5.2.3. Managing Director
- 5.3. Chairman of the Board of Directors
- 5.4. Division of Corporate Functions and Powers

## **6. AUDITORS**

- 6.1. Functions of the IRBA
- 6.2. Registered Auditors
- 6.3. Appointment of Auditor
- 6.4. Resignation of Auditor
- 6.5. Rotation of Auditor
- 6.6. Rights and Functions of the Auditor
- 6.7. Liability of the Auditor

## **7. DIRECTORS**

- 7.1. Introduction
- 7.2. Relationship with the Company
- 7.3. Types of Directors
- 7.4. General
- 7.5. First Directors
- 7.6. Election of Directors
- 7.7. Ineligibility and Disqualification
- 7.8. Vacancies on the Board and Removal of Directors
- 7.9. Liability of Directors
- 7.10. Indemnification and Director's Insurance
- 7.11. Directors' Rights and Duties (NB!!!)
  - 7.11.1. Duty to Act in Good Faith
  - 7.11.2. Duty to Act in the Best Interests of the Company



- 7.11.3. Duty to Act with Due Care and Skill
- 7.11.4. Prohibition on Insider Trading
- 7.11.5. Disclosure of Information in Contracts Between Director and Company

**8. SHARE CAPITAL AND SHAREHOLDERS**

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- 8.1. Share Capital
  - 8.1.1. Nature of Shares
  - 8.1.2. Classes of Shares
- 8.2. Membership of a Company
  - 8.2.1. Shareholders
  - 8.2.2. Capacity and Acquisition of Membership
  - 8.2.3. Termination of Membership
  - 8.2.4. Nominee Shareholders
- 8.3. Transfer of Securities
- 8.4. Capital Maintenance Rules
  - 8.4.1. Acquisition of Own Shares
  - 8.4.2. Distribution to Shareholders
  - 8.4.3. Financial Assistance

**9. OFFER OF SHARES**

- 9.1. Offer of Shares
  - 9.1.1. Initial Public Offer (IPO)
  - 9.1.2. Offer for Subscription vs Offer for Sale
  - 9.1.3. Offer to Public
  - 9.1.4. Advertisements Relating to Offers
  - 9.1.5. Prospectus

**10. GENERAL MEETINGS AND RESOLUTIONS**

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- 10.1. General Meetings
- 10.2. Resolutions at Meetings

**11. COMPANY GROUPINGS**

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- 11.1. Overview
- 11.2. Group of Companies
  - 11.2.1. Constitution of Group
  - 11.2.2. Definition of a Holding Company and Subsidiary
  - 11.2.3. Holding of the Majority of Voting Rights in the Subsidiary
  - 11.2.4. Wholly-owned Subsidiary
- 11.3. Subsidiary as a Member of its Holding Company
- 11.4. Regulation of Transactions between Related companies

## 12. MAJORITY RULE AND PROTECTION OF MINORITY INTERESTS

- 12.1. The Majority Rule in *Foss v Harbottle*
- 12.2. Protection of Minority Interests
- 12.3. *Excursus*: Protection of Whistleblowers

## 13. Corporate Governance

- 13.1 This part of the course will introduce students to the basic principles of corporate governance as set out in the King Code and in the 2008 Companies Act.