

# LAW OF CONTRACT A – 2022

## 1. INTRODUCTION

### Overview

The Law of Contract A is a self-standing semester course that counts for 10 credits in the Faculty of Law in the LLB2, as well as comprising one of the six component courses in the Legal Theory 3 major in the undergraduate degrees offered by the Faculties of Humanities, Science and Commerce. Students who pass the Law of Contract A as part of the Legal Theory major are exempted from the course in the LLB curriculum.

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

- To provide the students with an understanding of the historical development of the uniquely South African law of contract from its Roman, Roman-Dutch and English roots.
- To provide the students with a thorough understanding of the essential elements of a valid contract in South African law.
- To assist students in being able to identify and solve authentic legal problems with regard to the negotiation and creation of contracts.
- To familiarise students with legal concepts and terminology commonly encountered in the law of contract.
- To assist students in extracting principles from law reports and other source material.

### Credit Value & NQF level

10 Credits at NQF level 7

### Assumptions of Prior Learning

When entering 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 basic legal concepts and terminology.
- 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 an understanding of legal problem-solving techniques and how to apply these to solve legal problems.
- Have a working knowledge of legal referencing conventions, and to be able to apply these to their written work.
- Have a basic understanding of constitutional principles and how these principles impact on private law issues.

## **2. OUTCOMES**

### **Critical Outcomes**

Students will be able to:

- identify and solve practical legal problems.
- organise and manage themselves and their work load.
- collect, 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.
- recognise problem-solving contexts involving the law of contract.

### **Intended Specific Outcomes**

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

- Understand how the South African law of contract has developed from its Roman, Roman-Dutch and English roots into a constitutional era.
- Understand and explain the essential elements of a valid contract, and their various requirements.
- Understand and explain the sorts of legal issues that can affect the existence of the various contractual elements, and how the contractual relationship will be affected as a result.
- Apply the knowledge acquired during the course to solve practical problems with regard to the negotiation and creation of a contract.

## **3. TEACHING METHODS**

The course will be offered online through video lectures under current covid restrictions, due to the size of the class. Where national and university regulations make it possible, supplemental face-to-face classes (possibly split up into groups to manage class size) will be offered.

#### **4. SUPPLEMENTARY WORK/CLASSES**

With such a large class being run exclusively by the lecturer, small-group tutorials are not feasible. Face-to-face, we have traditionally run some full-class tutorial-type sessions, attendance at which has always been voluntary, but encouraged. Since the course content is being offered online, supplemental face-to-face classes may take the place of tutorial sessions. Further interactive Zoom sessions may also be offered if deemed necessary. All supplemental sessions will focus on problem-solving skills. A “Sample Problems” document will be made available to you, containing practice questions of the type used in past tests or exams. You are all encouraged to work through these problems with a view to (a) cross-checking if your knowledge is good; and (b) to practising how you would tackle the solution to a real-life legal problem by applying your knowledge.

#### **5. BASIC COURSE CONTENT (see course material for details)**

I An introduction to the development of the South African Law of Contract.

II The Elements of a Valid Contract:

- Capacity
- Consensus
  - Offer and Acceptance
  - Absence of consensus: Theories of Contract and the Law of Mistake; Signed Documents & Ticket Cases; Rectification
  - Improperly obtained consensus (Misrepresentation; Duress; Undue Influence; Bribery; fair dealing under the Consumer Protection Act)
- Legality
  - General principles of public policy and legality
  - The impact of the Constitution on contract law
  - Specific topics on legality (contingency fee agreements; covenants in restraint of trade)
- Possibility of performance
- Formalities

III The contract of suretyship

The implications of legislation such as the Consumer Protection Act will be considered where relevant throughout the course.

## 6. RESOURCES

The core reading and study material for this course are the leading judgments on the aspects of the law of contract 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. F

As far as textbooks are concerned, there is a prescribed text: Hutchison et al *The Law of Contract in South Africa* 3<sup>rd</sup> ed (Oxford University Press, 2017). It is available in hard copy and as an eBook through the Library,

Other texts that can be consulted are:

Christie and Bradfield *Christie's The Law of Contract in South Africa* (2016), 7<sup>th</sup> edition, Butterworths: Durban.

Sharrock "The Law of Contract" in *LAWSA* Vol 9 3<sup>rd</sup> ed (2014) Butterworths: Durban.

Kerr *The Principles of the Law of Contract* (2002) 6<sup>th</sup> edition, Butterworths: Durban.

Van der Merwe, Van Huyssteen, Reinecke and Lubbe *Contract: General Principles* (2020) 6<sup>th</sup> edition, Juta: Cape Town.

De Wet and Van Wyk *Die Suid-Afrikaanse Kontraktereg en Handelsreg* (1992) 5<sup>th</sup> edition, Butterworths: Durban.

Joubert *Contract: General Principles of the Law of Contract* (1987) Juta: Cape Town.

Lubbe and Murray *Farlam and Hathaway: Contract – Cases, Materials and Commentary* (1988) Juta: Cape Town.

Bhana, Bonthuys & Nortje *Students' Guide to the Law of Contract* (2015) 4<sup>th</sup> edition, Juta: Cape Town.

Students are strongly advised to utilise these resources in the course of their studies.

Students are also encouraged to browse through the shelves in the library or the Faculty's electronic page, and familiarise themselves with the Faculty's holdings. This will stand them in good stead when research is undertaken for assignments.

## 6. 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 how the South African law of contract has developed from its Roman, Roman-Dutch, English and domestic South African roots, and to be able to evaluate how this area has developed and transformed under a constitutional dispensation.	<ul style="list-style-type: none"> <li>- Identify from which system of law a particular rule of contract originates.</li> <li>- Describe how the South African law of contract has absorbed features of these various legal systems.</li> <li>- Discuss why South African law has chosen to adopt a particular rule from a particular system.</li> </ul>	<ul style="list-style-type: none"> <li>- Be able to explain in a written answer the origin of a rule of contract in a particular context while solving a legal problem, and how or why this is important.</li> </ul>
Understand, analyse and evaluate the essential elements of a valid contract, and their various requirements.	<ul style="list-style-type: none"> <li>- Define the various essential elements of a contract.</li> <li>- Describe and explain the requirements that have to be satisfied for the various elements to exist.</li> <li>- Analyse, explain and evaluate the court decisions that have authoritatively determined what the various elements and requirements are.</li> <li>- Demonstrate an understanding of key contractual terminology.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining and critically analysing the process of how a contract is concluded, focusing on constituent components.</li> <li>- Present in written form discussions, case notes or an analytical discussion of a case (or legislation) on the essential elements of a valid contract.</li> <li>- Embed all the above techniques in presenting answers to problems involving the creation of a contract.</li> </ul>
Analyse and evaluate critically the sorts of legal issues that can affect the existence of the various contractual elements, and how the contractual relationship will be affected as a result.	<ul style="list-style-type: none"> <li>- Identify the sorts of legal issues that can affect the existence of one of the contractual elements.</li> <li>- Explain why it may be proved that one of the essential elements of the contract does not exist because of one of these issues, and critique these.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining and critically analysing the various ways in which problems associated with the formation of a contract may arise.</li> <li>- Present in written form discussions, case notes or an analytical discussion of cases</li> </ul>

	<ul style="list-style-type: none"> <li>- Explain the various remedies available where a legal issue with regard to the creation of the contract is identified and proved to be present, and critique these.</li> </ul>	<p>or legislation on various problems associated with reaching a contractual agreement.</p> <ul style="list-style-type: none"> <li>- Embed all the above techniques in presenting answers to problems involving situations where a contractual relationship is affected by a failure to meet the various requirements of a valid contract, and the remedies that may exist in such cases.</li> </ul>
<p>Apply the knowledge acquired during the course to solve practical problems with regard to the negotiation and creation of a contract.</p>	<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>

The final mark for the course is comprised of the following components:

Examination: out of 70 marks.

Class work: out of 30 marks.

**Total: 100 marks.**

*Class work*

There is one assignment for this course. The assignment is an authentic one, and will require the students to write a mock judgment: the student must imagine that he or she is a judge who has to resolve a contractual dispute brought before his or her court. The assignment should be approximately 1800 words in length, and will have to be thoroughly researched, and correctly referenced and presented. The assignment is compulsory. The

assignment will be submitted on-line through the Assignment function on RUconnected. Further arrangements will be communicated in due course due to the fluid covid situation.

### *Summative examination*

One summative paper will be written in June/July. The mode of examination will be decided centrally when a fluid covid situation allows for clearer planning closer to the time. The summative will be out of 70 marks. All questions will be compulsory. The questions will require students both to be able to explain legal rules and principles in a theoretical sense, to write case notes on leading precedents, as well as to apply their knowledge to solving practical problems in authentic contexts. The examination is compulsory. An external examiner assesses the quality of both the examination paper and the students' answers. Further arrangements will be communicated in due course.

## **7. EVALUATION**

This course is evaluated on a cyclical basis, and is also evaluated as part of the global Legal Theory Three evaluation at the end of the academic year.