

LAW OF SALE AND LEASE – 2022

The Law of Sale and Lease is a penultimate-year LLB credit. The two subject areas divide the course, with Sale being offered in term 1, and Lease in term 2. For the purposes of coherence, each component of the course is discussed separately below, in order to explain more specifically the nature of each component.

A SALE

INTRODUCTION

Overview

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

- To provide the students with a thorough understanding of the essential elements of a contract of sale, and how the sale contract differs from other forms of contract.
- To provide the students with a thorough understanding of the legal effects of a contract of sale, and especially how this area has developed and transformed under the Constitution.
- To ensure that the students are aware of the legal duties imposed upon buyers and sellers, and the consequences that may flow if these duties are breached.
- To make the students aware of the special requirements that attach to certain special forms of sale, or sales regulated by statute.
- To assist students in being able to identify and solve authentic legal problems with regard to sale contracts.
- To familiarise students with legal concepts and terminology commonly encountered in the law of sale.

Credit Value

5 Credits at NQF level 8.

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 Sale

The Sale 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 sale.
- (b) Understand, analyse and evaluate some of the key legal consequences of entering into a contract of sale.
- (c) Understand, analyse and evaluate the legal duties that are imposed upon buyers and sellers, and the consequences that flow if these duties are breached.
- (d) Understand, analyse and evaluate the features of certain special types of sale contracts, and sales regulated by statutes.
- (e) Apply the knowledge acquired during the course to solve practical problems with regard to sale contracts.

TEACHING METHODS

The plan (February 2022) is that the 2022 course will be presented by means of *viva voce* lectures in a live class, face-to-face environment. 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 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. There are no tutorials in this portion of the course.

However, since the situation remains fluid, it may be possible that reversion to online learning may be necessary. Announcements will be made as and when necessary about this.

COURSE CONTENT

Section 1 – The definition and essentials of the contract

- Definition
- Comparison with other contracts
- Essentials: the thing sold (*merx*) and the price (*pretium*)

Section 2 – The legal effect of the contract

- The passing of ownership
- Risk and benefit
- Conditional sales

Section 3 – Seller’s legal duties and buyer’s remedies

- Care of the thing sold
- Making the thing sold available
- Warranty against eviction
- Duty to make the thing available free from defects
 - patent and latent defects and remedies
 - exclusion of liability for defects
 - aedilician actions in cases of *dicta et promissa*
 - statutory protections and remedies

Section 4 – Buyer’s duties and seller’s remedies

- Payment of the purchase price
- Taking delivery of the *merx*
- Reimbursement of the seller’s necessary expenses
- Remedies

Note that throughout the course the effect of the Consumer Protection Act will be considered where it impacts upon the common-law position.

RESOURCES

The core reading and study material for this course are the leading judgments on the aspects of the law of sale to be studied. These cases may be found in the law reports, which may be accessed from the Law Library database page, in electronic form. For a full list of cases, see the course handout. As to secondary literature for supplementation, see:

Glover, GB *Kerr's The Law of Sale and Lease* (4th ed, LexisNexis, 2014).

Graeme Bradfield and Karin Lehmann *Principles of the Law of Sale and Lease* (3rd edition, Juta, 2013).

Zulman, RH and Kairinos, G: *Norman's Purchase and Sale in South Africa* (6th ed, Butterworths, 2017)

Hackwill, G: *Mackeurtan's Sale of Goods in South Africa* (5th ed, Juta, 1984) (Mackeurtan)

Joubert, W (ed): *The Law of South Africa*, vol 24, section on Sale by Kerr & Glover.

Kahn (ed): *Contract and Mercantile Law through the Cases, Vol II* (Juta, 1985), especially the chapter by Zeffertt "Purchase and Sale" 3-249

Occasionally, students will be referred to pertinent Journal articles on aspects of the course content. These may also be found in the Library.

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

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 sale.	<ul style="list-style-type: none"> - Define and discuss the two essential elements of a contract of sale. - Explain, analyse, compare/contrast, distinguish the requirements that have to be satisfied for these elements to exist. - Demonstrate a critical understanding of the court decisions that have authoritatively determined what the various elements and requirements are. 	<ul style="list-style-type: none"> - Use all these techniques in presenting written answers to authentic problem-type scenario questions.

<p>Understand, analyse and evaluate some of the key legal consequences of entering into a contract of sale.</p>	<ul style="list-style-type: none"> - Define and discuss these legal consequences - Explain, analyse, compare/contrast, distinguish the requirements that have to be satisfied where these consequences ensue. - Demonstrate a critical understanding of the court decisions that have authoritatively determined what the consequences are. 	<ul style="list-style-type: none"> - Use all these techniques in presenting written answers to authentic problem-type scenario questions.
<p>Understand, analyse and evaluate the legal duties that are imposed upon buyers and sellers, and the consequences that flow if these duties are breached.</p>	<ul style="list-style-type: none"> - Define and discuss these duties and their remedies - Explain and analyse critically these duties and their respective remedies - Demonstrate a critical understanding of the court decisions that have authoritatively determined what the various elements and requirements are. 	<ul style="list-style-type: none"> - Use all these techniques in presenting written answers to authentic problem-type scenario questions.
<p>Understand, analyse and evaluate the features of certain special types of sale contracts, and sales regulated by statutes.</p>	<ul style="list-style-type: none"> - Distinguish in what circumstances legislation, as opposed to the common law, will apply. - Demonstrate a critical understanding of how legislation changes the legal position if it is applicable. 	<ul style="list-style-type: none"> - Use all these techniques in presenting written answers to authentic problem-type scenario questions.
<p>Apply the knowledge acquired during the course to solve practical problems with regard to sale contracts.</p>	<ul style="list-style-type: none"> - Identify the relevant legal problem or issue. - Select and discuss the relevant law, and apply or evaluate the relevant legal precedents with regard to that issue. - 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. 	<ul style="list-style-type: none"> - 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 Sale module is comprised of the following components:

Summative Examination: 35 marks out of a 70-mark examination.
Continuous assessment: 15 marks out of a class mark of 30.

These totals will be added to the results in the Lease module and converted into a percentage (see the comment on the examination below).

Sale Test

There is one test for the Sale module, which is written late in the first term. The test will be out of 15 marks. The test will contain questions equivalent to that which may be found in the June examination, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory. Further arrangements will be communicated in due course about the form this will take due to the fluid covid situation, **but at the time of preparing this document the Faculty's intention is to have closed-book tests in a physical venue.**

Summative Examination

One two-hour paper for Sale & Lease will be written in June. The examination will be out of 70. The Sale component will be out of 35. The questions will require students both to be able to explain legal rules and principles in a theoretical sense 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 about the form this will take due to the fluid covid situation, **but at the time of preparing this document the Faculty's intention is to have closed-book tests in a physical venue.**

EVALUATION

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

B LEASE

INTRODUCTION

Overview

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

- To provide the students with a thorough understanding of the essential elements of a contract of lease, and how the lease contract differs from other forms of contract.
- To provide the students with a thorough understanding of the legal effects of a contract of lease, and especially how this area has developed and transformed under the Constitution.
- To ensure that the students are aware of the legal duties imposed upon lessors and lessees, and the consequences that may flow if these duties are breached.
- To make the students aware of the special requirements that attach to certain special forms of lease, or leases regulated by statute.
- To assist students in being able to identify and solve authentic legal problems with regard to lease contracts.
- To familiarise students with legal concepts and terminology commonly encountered in the law of lease.

Credit Value

5 Credits at NQF level 8.

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.
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OUTCOMES

Critical Outcomes

Students will be able to:

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 Lease

The Sale 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 and explain the essential elements of a valid contract of lease.
- (b) Understand and explain some of the key legal consequences of entering into a contract of lease.
- (c) Understand and explain the legal duties that are imposed upon lessors and lessees, and the consequences that flow if these duties are breached.
- (d) Understand and explain the features of certain special types of lease contracts, and leases regulated by statutes.
- (e) Apply the knowledge acquired during the course to solve practical problems with regard to lease contracts.

TEACHING METHODS

The plan (February 2022) is that the 2022 course will be presented by means of *viva voce* lectures in a live class, face-to-face environment. 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 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. There are no tutorials in this portion of the course.

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COURSE CONTENT

1 The nature of the contract

The essentials, formalities and the parties

2 Types of leases: Long and short leases and the rule “Huur gaat voor koop”

3 The duration of the contract of letting and hiring

Fixed period lease

Tenancy at will

Periodic lease
Hybrid

- 4 The legal effect of leases (rights and duties of the parties).
 - The lessor's obligation to deliver the property to the lessee
 - Free of impediments
 - In a fit condition for the purpose leased
 - Remedies for breach
 - The lessor's obligation to give unhindered use and enjoyment during the currency of the lease
 - Maintenance and repairs
 - Warranty against eviction by third parties with greater title
 - Remedies for breach
 - The so-called warranty against defects and its remedies
 - The lessor's obligation to pay rates and taxes
- 5 The lessee's duty to pay rent
 - Cash or kind
 - Where and how - the danger of using an agent
 - When
 - Lessors tacit hypothec
 - The lessee's duty to take proper care of the property and remedies
 - The lessee's duty to restore the property at the end of the lease and Remedies
- 6 The impact of the Constitution and legislation such as PIE, the Rental Housing Act and the Consumer Protection Act
- 7 The legal effect on third parties (subletting, assignment and cession)
- 8 Termination of leases
 - The effect of termination
- 9 The lessee's right to improvements
- 10 Renewal and relocation of a lease

RESOURCES

The core reading for this course are the textbooks, law reports and specific legislation relating to this branch of the law which may be accessed from the databases page in the library.

Relevant secondary texts for supplementation are:

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Graeme Bradfield and Karin Lehmann *Principles of the Law of Sale and Lease* (3rd edition, Juta, 2013).

Kerr & Glover “Lease” in *LAWSA* Vol 14(2) (2ed, Butterworths, 2008)

Sue-Mari Viljoen *The Law of Landlord and Tenant* (Juta, 2016)

WE Cooper *Landlord & Tenant* (2ed, Juta, 1994).

STUDENT ASSESSMENT

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Assessment Strategy

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These totals will be added to the results in the Sale module and converted into a percentage (see the comment on the examination below).

Lease Test/Writing Task

There is one test for the Lease module, which is written late in the second term. The test will be out of 15 marks. The test will contain questions equivalent to that which may be found in the June examination, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory. It is likely that this will be done through the Quiz function on RUconnected. Further arrangements will be communicated in due course about the form this will take due to the fluid covid situation, **but at the time of preparing this document the Faculty's intention is to have closed-book tests in a physical venue.**

Summative Examination

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