

COURSE OUTLINE

COMPANY LAW 'B'

JULY 2010

OVERVIEW

Company Law 'B' is offered in the second semester of the penultimate year of the LLB programme. The course is aimed at equipping students to work on the affairs of medium and large corporate clients, when students enter practice. The principal objective is to provide such students with a working knowledge of important areas of corporate law which they are likely to encounter in their future working environments. The secondary objective is to raise students' awareness of the South African and international business environment, and in particular the legal and regulatory challenges facing large corporations.

LECTURER

The course is lectured by Adv. Craig Renaud, whose office is on the top floor of the Faculty building. Students who wish to meet with Adv. Renaud to discuss any issues arising out of the course are urged to make an appointment with him either at the end of the lecture period or by e-mail at c.renaud@ru.ac.za

CREDIT VALUE

The credit value of this course is 10 semester credits.

ASSUMPTIONS OF PRIOR LEARNING

The following assumptions of prior learning are made:

- the ability to communicate effectively in both spoken and written English;
- the ability to read, interpret and extract legal principles from legislation, court decisions, and other source materials;
- the ability to learn independently;
- the ability to apply problem-solving techniques to practical situations.

OUTCOMES

Critical Outcomes

The course intends to develop in students the skills set out below which are essential to the study and practice of law:

- problem identification and solving;
- successful completion of given tasks on time and without supervision ;
- collection, analysis and evaluation of legal information;
- effective communication in both the spoken and written word;
- working alone and in groups in dispensing practical advice to clients.

Specific outcomes

Following the successful completion of this course, the students should be able to:

- demonstrate knowledge of the objectives and rationale for the regulation of competition.
- recognise examples of restrictive practices, and of the abuse of market dominance.
- understand the functions of the Competition Commission, Competition Tribunal and Competition Appeal Court.
- demonstrate knowledge of the competition authorities' powers of investigation and enforcement, and the penalties which may be imposed on companies.
- demonstrate knowledge of the objectives and rationale for the regulation of mergers and acquisitions of companies.
- understand the formal steps involved in a merger and an acquisition.
- show awareness of the documentation required in order to effect a merger or acquisition.
- understand the role of the independent legal advisor in a merger or acquisition.
- demonstrate knowledge of the Securities Regulation Code on Takeovers and Mergers, and the Rules of the Securities Regulation Panel.
- demonstrate a basic understanding of the mechanisms of initial public offerings and private placements of securities.
- demonstrate knowledge of companies' disclosure requirements, the duties of directors, and the role of the legal advisor in listing companies on public stock exchanges.
- demonstrate knowledge and understanding of the Broad-Based Black Economic Empowerment Act and the associated Codes and Transformation Charters.
- demonstrate basic knowledge of the King Code on Corporate Governance and the duties which arise therefrom.

TEACHING METHODS & STUDENTS' LEARNING RESPONSIBILITIES

Teaching will take the form of formal lectures and class discussions. Students are expected to take responsibility for their own learning and must therefore read the relevant source material to which they will be referred in lectures and must complete any tasks assigned. Pre-reading ahead of lectures is recommended so as to facilitate better understanding of concepts.

Students must also stay abreast of current developments in the South African and international business community by reading relevant publications and consulting web-sites to which reference will be made below. For discussions, tests and examinations, practical examples and cases will be used as the basis of learning the principles of law in question.

COURSE CONTENT

The course is divided into five parts. Slightly more emphasis will be placed on the first three parts, and slightly less on the last two parts. This is not because parts 4 and 5 of the course are less important, but merely because time constraints will make it impossible to give them as much attention as will be given to parts 1-3.

Part 1: An Introduction to Competition Law

This part of the course will be constructed around the Competition Act (89 of 1998) as the core document. Students' attention is drawn to the fact that Competition Law is offered as a separate elective subject in the final year of the LLB course. The competition law element of Company Law 'B' is therefore necessarily limited in scope in order to minimise overlap between the two courses.

It will cover:

- The objects of, and rationale for, competition law.
- A brief history of the regulation of competition.
- Restrictive horizontal practices: legislation and cases.
- Restrictive vertical practices: legislation and cases.
- The abuse of dominance: legislation and cases.
- Institutions, procedures and remedies.

Part 2: The Law of Mergers and Acquisitions

This part of the course will be constructed around the Securities Regulation Code on Takeovers and Mergers, and the Rules of the Securities Regulation Panel as the core documents.

It will cover:

- Introduction and general principles of takeover and merger control.
- A brief history of takeover and merger control.
- The approach to the target company, announcements, and the role of the independent legal advisor.
- The mandatory offer and its terms.
- Conduct during the offer period.
- Documentation required from the boards of the offeror and offeree companies.

- Restrictions following offers.
- The role of the Securities Regulation Panel.

Part 3: Regulation of Initial Public Offerings ('IPOs') and Private Placements

This part of the course will be constructed around the Johannesburg Stock Exchange Listings Requirements as the core document.

It will cover:

- Introduction and general principles of the listing of companies on public stock exchanges.
- Disclosure requirements, the duties of directors, and the role of the legal advisor.
- Listing particulars and other documents.
- Offers for sale or subscription.
- Placings.
- Institutions and remedies.

Part 4: Black Economic Empowerment (BEE)

This part of the course will introduce students to the basic principles of BEE, and to the general framework of legislation and regulations which govern BEE.

Part 5: Corporate Governance

This part of the course will introduce students to the basic principles of corporate governance as set out in the King Code.

RESOURCES

There is no prescribed textbook for this course. Students are nevertheless urged to purchase at least one of the two books on competition law, plus the other two books listed below. Students will also be referred in lectures to academic articles, reported cases, statutes, web-sites and relevant sections of various textbooks.

Books

- Brassey, M. *et al.* 2002; *Competition Law*. Juta.
- Neethling, J. 2008; *Unlawful Competition*. 2nd ed. LexisNexis.

- Davis, D. *et al* 2009; *Companies and Other Business Structures in South Africa*. Oxford University Press.
- Jordaan, B. *et al* 2009; *Understanding Broad-Based Black Economic Empowerment*. Juta (Pocket Companion Series).

Statutes

- The Competition Act, 89 of 1998.
- The Companies Act, 71 of 2008.
- The Consumer Protection Act, 68 of 2008.
- The Broad-Based Black Economic Empowerment Act, 53 of 2003.

Documents

- The Securities Regulation Code on Takeovers and Mergers.
- The Rules of the Securities Regulation Panel.
- The Johannesburg Stock Exchange Listings Requirements.
- The King Code on Corporate Governance.

Internet sources

- www.fin24.com
- www.moneyweb.co.za
- www.bloomberg.com
- www.economist.com/businessfinance/
- www.compcom.co.za

ASSESSMENT

There will be **four short assignments** set during the course. The marks for these four assignments together will comprise the class component of the course and account for 30% of the final mark. Completion of all four assignments by each student is compulsory, and will be enforced as a DP requirement. The examination will account for the remaining 70% of the

mark. **Students are warned that it will not be possible to pass the examination without having done the additional reading to which they will be referred in lectures.** It is every student's responsibility to sign the class register that will be circulated during every lecture. The class register will serve as conclusive proof of attendance or non-attendance at lectures.

Craig Renaud
July 2010