



## **RHODES UNIVERSITY**

### **LAW OF PARTNERSHIPS AND TRUSTS**

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#### **1. INTRODUCTION**

##### **1.1 Purpose of the course**

This course aims at exposing you to some of the mediums available for conducting business and holding assets in South Africa, namely sole proprietorships, co-operatives, partnerships and trusts. (Companies are dealt with in Company Law A and B.) The emphasis of the course will fall primarily on the nature, establishment, functioning and winding-up of these structures. The course aims to give you both the theoretical basis upon which these entities (particularly partnerships and trusts) exist in South African law, and also practical examples and exercises so that you will be confident in dealing with partnership and trust matters as a legal practitioner.

##### **1.2 Credit Value**

10 Credits

##### **Assumptions of Prior Learning (or *Learning assumed to be in place*)**

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.
  - Apply legal problem solving techniques to practical situations.
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## **2. OUTCOMES**

### **2.1 Critical Cross-Field Outcomes**

Students will be able to:

- a) identify and solve practical legal problems
- b) work in a team
- c) organize and manage themselves
- d) collect, analyse and evaluate information from diverse sources
- e) communicate effectively
- f) use technology to aid their research
- g) recognize problem-solving contexts in partnership and trust law

### **2.2 Specific Intended Outcomes**

This course is designed so that after successfully completing this course, you should be able to achieve the following outcomes:

- Provide an overview of the concepts and principles of sole proprietorships, co-operatives, partnerships and trusts in South African law.
- Identify and distinguish between the essential elements of each business or asset holding form.
- Evaluate and appreciate the comparative advantage(s) and disadvantage(s) of each business or asset holding medium.
- Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various entities.
- Apply the knowledge acquired during the course to solve practical problems with regard to business and asset holding entities.

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## **3. TEACHING METHODS AND STUDENTS' LEARNING RESPONSIBILITIES**

This course aims to analyse and critique the law in its present state and suggest possible reforms. To this end a combination of formal lecturing, class discussions and seminars will be conducted. Emphasis will fall on discussing and evaluating relevant case law and legislation and the practical implications of the material studied.

Students are expected to take responsibility for their own learning by reading and preparing themselves in advance of each lecture. A separate reading list will be provided, and students will be referred to additional articles, cases and internet

resources during lectures. Both for class discussions / group participation and examinations, cases and practical examples will be utilised as the basis for learning the principles of law in issue. In order to gain a clearer perspective of South African law students will be referred to, and will be expected to read, material relating to the law in other jurisdictions.

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#### **4. COURSE/MODULE CONTENT**

The course covers four types of entities which are commonly used in South Africa either as mediums through which to conduct business, or for the holding of assets. These are:

- Sole proprietorships
- Partnerships
- Co-operatives
- Trusts

The main focus of the course is on partnerships and trusts, which will be examined from a legislative, a case law, and above all from a practical point of view. The emphasis in lectures, tests and assignments, will be on equipping students to deal with real legal problems involving these entities, which they are likely to face in practice as attorneys, advocates or corporate lawyers. The course will not deal with testamentary trusts except in cases where reference to a testamentary trust is necessary in order to illustrate a general trust principle. Testamentary trusts are dealt with in a separate course: the Law of Succession and Administration of Estates.

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#### **5. RESOURCES**

The prescribed textbook for the course is: F du Toit; *South African Trust Law: Principles and Practice* (2nd ed) LexisNexis (2007). In addition, students are urged to purchase either *Companies and Other Business Structures in South Africa* (2009) by Davis *et al*, or *Entrepreneurial Law* (4th ed, 2008) by Benade *et al*. Students will be referred during lectures to various other textbooks, journal articles, cases and internet resources.

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## 6. STUDENT ASSESSMENT

<b>SPECIFIC OUTCOMES</b> On completion of this course, you should be able to:	<b>ASSESSMENT CRITERIA</b> (What evidence must you provide to show that you are competent?) You must be able to:	<b>ASSESSMENT TASKS</b> The evidence will be gathered in:
Provide an overview of the concepts and principles of entrepreneurial Law in South Africa.	<p>Apply statutory and common law principles.</p> <p>Identify critical aspects of case law.</p> <p>Demonstrate and understanding of the concepts and principles contained in the case law and statutes.</p>	<p>Class discussion /seminars / group participation</p> <p>Class /group assignments</p> <p>Test</p> <p>Examination</p>
Compare aspects of South African law with selected foreign laws.	<p>Describe and explain the various business and asset holding structures.</p> <p>Identify the relevant legislative provisions.</p> <p>Identify critical aspects of case law regarding each business and asset holding form.</p> <p>Demonstrate an understanding of the concepts and principles contained in the case law and statutes.</p>	<p>Class discussion /seminars / group participation</p> <p>Class /group assignments</p> <p>Test</p> <p>Examination</p>

Evaluate and understand the comparative advantage(s) and disadvantage(s) of each business or asset holding structure.

Compare different business and asset holding mediums in respect of the limitations and requirements imposed by statute and the common law.

Class discussion /seminars / group participation

Class /group assignments

Test

Compare the various entities in respect of the advantages associated with each entity, having regard to practical situations.

Examination

Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Describe the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Class discussion /seminars / group participation

Class /group assignments

Test

Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of the parties to the various business and asset holding forms.

Examination

Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations.

Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises and asset holding entities.

Identify the relevant legal problem or issue.

Tests

State the relevant law, Examination  
and discuss 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.

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## **7. ASSESSMENT STRATEGY**

The class work component of the course amounts to 30% of the final mark and the remaining 70% comprises one two hour examination, written in November.

Students are assessed for the class work component on the basis of one compulsory assignment and one compulsory test will each count 15% towards the final mark of the course.

The test and examination 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.

Attendance at lectures is compulsory, and a register will be taken. Students are responsible for ensuring that they have signed the attendance register. It is accepted that the ideal of 100% attendance is generally not attainable. A student 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. A student who misses more than the permissible number of lectures, or who fails to write the test and/or assignment has not met the course requirements and as a result no DP certificate will be granted for this course.

## **8. EVALUATION**

Evaluation is carried out every three years using the Rhodes University Web-based Evaluation Assistant and it is conducted by a staff member who has not been involved in the course. Students respond to a list of questions by awarding a rating in addition to responding to some global questions. The responses are analysed by the Centre for Higher Education, Teaching and Learning, who compile a report for the lecturer. The results of the report are then conveyed to students. This provides an opportunity for the lecturer to interact with students and reach consensus on how aspects of the course can be improved. It also provides an opportunity for students to reflect on their own learning strategies and commitment to the course.

## **9. CONTACT DETAILS**

Should you wish to contact the lecturer, Adv Craig Renaud, you may do so via e-mail: [c.renaud@ru.ac.za](mailto:c.renaud@ru.ac.za) or at his office on the top floor of the Law Faculty.