

# **CONTRACT B – 2022**

## **INTRODUCTION**

The Law of Contract B is a self-standing semester course that counts as a credit 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 Faculties of Humanities, Science and Commerce. Students who pass the Law of Contract B 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, and building upon the work done in Contract A:

- To provide students with an understanding of the contents of contracts, and how contracts are interpreted.
- To provide the students with a thorough understanding of how contractual rights are transferred, terminated and breached, and the remedies available for such breach.
- 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**

10 Credits at NQF level 7

## **Assumptions of Prior Learning**

When entering this course, students need to be able to:

- Have an understanding of the legal concepts dealt with in Contract A.
- 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.

## **OUTCOMES**

### **Critical Outcomes**

Students will be able to:

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

### **Intended Specific Outcomes**

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

- (a) Understand and analyse the contents of a contract, and to be able to analyse and evaluate how a contract is interpreted.
- (b) Understand, analyse and evaluate how contractual rights may be transferred.
- (c) Understand, analyse and evaluate the various ways in which a contractual relationship may be terminated.
- (d) Understand, analyse and evaluate the various ways in which a contract may be breached.
- (e) Understand, analyse and evaluate the various remedies for contractual breach.
- (f) Apply the knowledge acquired during the course to solve practical problems with regard to the operation, interpretation, termination and breach of contract.

## **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is no comprehensive hand-out for the course, and students will be expected to take their own notes during class. In lectures, the substantive 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 voluntary tutorials in this course, offered in conjunction with the overall Legal Theory Three tutorial programme. These tutorials focus on supplemental instruction particularly in so far as applied problem solving is concerned.

## **COURSE CONTENT**

### **Classification of Terms**

#### **Important types of term having an effect on the operation of a contract**

Conditions  
*Modus* and *Dies*  
Assumptions or Suppositions  
Warranties

#### **Interpretation of a Contract**

The parol evidence rule  
The principles of interpretation  
Example of interpretation in action: Exemption clauses

#### **Breach**

Positive Malperformance  
Repudiation and Anticipatory Breach  
Negative Malperformance (*Mora*)

#### **Remedies**

Specific Performance  
Reciprocity and the *exceptio non adimpleti contractus*  
Cancellation  
Damages  
Penalty Stipulations  
Interdict

#### **The transfer of contractual obligations**

Out and out cession  
Cession in securitatem debiti

#### **The Alteration and Termination of Contractual Obligations**

Termination by Performance  
Termination by Agreement  
Termination by Operation of Law

#### **Parties to contracts**

## 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 in electronic form from the Law Library resources. For a full list of cases, see below.

As far as textbooks are concerned, although there is a prescribed text: Hutchison et al's *The Law of Contract in South Africa* 3 ed (OUP, 2017). Other recommended texts, of which there are copies in the Library, are:

Christie *The Law of Contract in South Africa* (2016), 7<sup>th</sup> edition, Butterworths.

Sharrock "The Law of Contract" in *LAWSA* Vol 5(1) (2<sup>nd</sup> ed) (2004) 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.

Bhana, Bonthuys & Nortje *Student's Guide to the Law of Contract* (2015) 4th edition, Juta: Cape Town.

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

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

Hawthorne and Pretorius *Contract Law Casebook* (2010) 3rd edition, Juta: Cape Town.

## 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 and analyse the contents of a contract, and to explain and evaluate how a contract is interpreted.	<ul style="list-style-type: none"> <li>- Identify, discuss and explain the various common forms of contractual term found in contracts, and problems associated with these.</li> <li>- To analyse, compare and distinguish the various types of term.</li> <li>- Explain and analyse how contracts are interpreted.</li> <li>- Critique the process of contractual interpretation.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining and critically analysing the process of contractual interpretation.</li> <li>- Present in written form case notes or an analytical discussion of a case on the leading precedents discussed and examined on the various forms of contractual term.</li> <li>- Be presented with a contract, and to be able to identify and explain, with reference to authority, various types of</li> </ul>

		<p>contractual clause, and how these are to be compared and contrasted.</p> <ul style="list-style-type: none"> <li>- Embed all the above techniques in presenting answers to problems involving the contents of a contract and their interpretation.</li> </ul>
<p>Understand, analyse and evaluate how contractual rights may be transferred.</p>	<ul style="list-style-type: none"> <li>- Discuss and explain the concepts of compromise, delegation, assignment and cession.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining the requirements that have to be met for either compromise, delegation, assignment or cession.</li> <li>- present case notes or an analytical discussion of cases on the leading precedents discussed and examined on these topics.</li> <li>- present written evidence of an ability to compare and contrast the different ways in which contractual rights may be transferred.</li> <li>- Embed all the above techniques in presenting answers to problems involving the transfer of contractual rights.</li> </ul>
<p>Understand, analyse and evaluate the various ways in which a contractual relationship may be terminated.</p>	<ul style="list-style-type: none"> <li>- Discuss, analyse and evaluate the various ways in which a contract may be terminated, either by law or by an act of the parties.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining the various ways in which a contract may be terminated.</li> <li>- present case notes or an analytical discussion of cases on the leading precedents discussed and examined on the forms of termination.</li> <li>- Embed all the above techniques in presenting answers to problems involving termination.</li> </ul>
<p>Understand, analyse and evaluate the various ways in which a contract may be breached.</p>	<ul style="list-style-type: none"> <li>- Discuss, analyse and evaluate the various ways in which a contract may be breached.</li> </ul>	<ul style="list-style-type: none"> <li>- Write up coherent material, supported by authority, explaining the various forms of breach and how these are contrasted.</li> <li>- present case notes or an analytical discussion of cases on the leading precedents of the forms of breach.</li> <li>- Embed all the above techniques in presenting answers to problems involving breach.</li> </ul>

Understand, analyse and evaluate the various remedies for contractual breach.	- Discuss, analyse and evaluate the nature and scope of the various remedies available in law where a contract has been breached.	Write up coherent material, supported by authority, explaining the various forms of remedy and how these contrast. - present case notes or an analytical discussion of cases on the leading precedents of the forms of remedy. - Embed all the above techniques in presenting answers to problems involving breach.
Apply the knowledge acquired during the course to solve practical problems with regard to the operation, interpretation, termination and breach of a contract.	- Identify the relevant legal problem or issue. - Select 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, or propose a new solution to the problem.	- 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

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**

### Test

There is one test for this course, which is written early in the second term. 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 counts for the class-mark component of the course. The test is compulsory.

### Examination

One two-hour paper will be written in November. The examination 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.

## EVALUATION

This course is evaluated in line with Faculty policies.