

## **CONTRACT B – 2013**

### **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

### **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 explain the contents of a contract, and how a contract is interpreted.
- (b) Understand and explain how contractual rights may be transferred.
- (c) Understand and explain the various ways in which a contractual relationship may be terminated.
- (d) Understand and explain the various ways in which a contract may be breached.
- (e) Understand and explain 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 every three weeks, 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

### **An example of a special contract: The Contract of Suretyship**

## 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 the Law Library, both in paper and electronic form. 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* 2 ed (OUP, 2012). Other recommended texts, of which there are copies in the Library, are:

Christie *The Law of Contract in South Africa* (2011), 6<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* (2012) 4<sup>th</sup> edition, Juta: Cape Town.

De Wet and Van Wyk *Die Suid-Afrikaanse Kontrakereg 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.

Kahn *Contract and Mercantile Law: A Sourcebook* (1988) 2<sup>nd</sup> edition, Juta: Cape Town.

Hawthorne and Lotz *Contract Law Casebook* (1994), Juta: Cape Town.

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.

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

## 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 explain the contents of a contract, and 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>- Discuss and explain how contracts are interpreted.</li> <li>- Critically analyse the process of contractual interpretation.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the various forms of contractual term.</li> <li>- Write case notes on the leading precedents discussed and examined on the various forms of contractual term.</li> <li>- Write an essay, supported by authority, explaining and critically analysing the process of contractual interpretation</li> </ul>
Understand and explain how contractual rights may be transferred.	<ul style="list-style-type: none"> <li>- Discuss and explain the concepts of compromise, delegation and cession.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the requirements that have to be met for either compromise, delegation or cession.</li> <li>- Write case notes on the leading precedents discussed and examined on these topics.</li> <li>- Write an essay comparing and contrasting the different ways in which contractual rights may be transferred.</li> </ul>
Understand and explain the various ways in which a contractual relationship may be terminated.	<ul style="list-style-type: none"> <li>- Describe and explain 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 short essays, supported by authority, explaining the various ways in which a contract may be terminated.</li> <li>- Write case notes discussing a leading precedent on one of the forms of termination.</li> <li>- Write an essay comparing and contrasting the different ways in which a contract may be terminated.</li> </ul>
Understand and explain the various ways in which a contract may be breached.	<ul style="list-style-type: none"> <li>- Describe and explain the various ways in which a contract may be breached.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the various forms of breach.</li> <li>- Write case notes discussing a leading precedent on one of the forms of breach.</li> <li>- Write an essay comparing and contrasting the different types of breach.</li> </ul>

Understand and explain the various remedies for contractual breach.	- Describe and explain the nature and scope of the various remedies available in law where a contract has been breached.	- Write short essays, supported by authority, explaining the various forms of remedy. - Write case notes discussing a leading precedent on one of the remedies. - Write an essay comparing and contrasting the remedies.
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. - State the relevant law, 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.	- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents.

### Assessment Strategy

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**

### Tests

There is one test for this course, which is written early in the second term. The test will be out of 25 marks, and students have 5 minutes reading time, and 40 minutes in which to complete the test. 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 40%, or 12 marks, of the class-mark component of the course. The test is compulsory.

### Assignments

There is one major assignment for this course, which is submitted towards the end of the second term. 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 2500 words in length, and will have to be thoroughly researched, and correctly referenced and presented. The assignment counts 60%, or 18 marks, of the class-mark component of the course. The assignment 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.