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# **LAW OF AGENCY, INSURANCE & CREDIT AGREEMENTS 2018**

The Law of Agency, Insurance & Credit Agreements is a final year LLB credit. The Law of Agency component of the course will comprise approximately 12 lectures. The Insurance Law component will commence immediately after the Law of Agency component and will comprise approximately 8 lectures. Credit Agreements follows immediately after the Insurance Law component. Credit Agreements comprise approximately 4 lectures. In 2016 Insurance and Credit Agreements will be done in term 3, and Agency in term 4.

For purposes of coherence, each component of the course is discussed separately below in order to explain more specifically the nature of each component.

## **A AGENCY**

### **INTRODUCTION**

#### **Overview**

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

- To provide students with a thorough understanding of the essential elements of a contract of agency and how the agency contract differs from other forms of contract.
- To provide students with a thorough understanding of the sources of agency power.
- To ensure that students are aware of the legal duties imposed upon principals and agents and the consequences that may flow if these duties are breached.
- To make students aware of the special requirements that attach to certain special forms of agency relationships, especially those regulated by statute.
- To assist students in being able to identify and solve authentic legal problems with regard to agency contracts.

- To familiarise students with legal concepts and terminology commonly encountered in the law of agency.

### **Credit Value**

5 Credits.

### **Assumptions of Prior Learning**

In order to successfully complete this portion of the course, students must be able to:

- Write and communicate 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 must be able to:

- Identify and solve practical legal problems.
- Organise and manage themselves and their work load.
- Collect, analyse and evaluate information from the various sources of law, as well as information conveyed during lectures.
- Communicate effectively in class discussions and written assignments.
- Use technology in legal research.
- Recognise problem-solving contexts involving the law of agency.

#### **Intended Specific Outcomes for Agency**

For successful completion of this portion of the course students should be able to achieve the following outcomes.

Students must be able to:

- Understand and explain the essential elements of a valid contract of agency, and how the agency contract differs from other forms of contract.

- Understand and explain the sources of agency power.
- Understand and explain the legal duties that are imposed upon principals and agents in terms of the principal-agent relationship, as well as the consequences if such duties are breached.
- Understand and explain the relationship between a principal and the third party.
- Understand and explain the relationship between an agent and the third party.
- Understand and explain the features of certain special forms of agency relationship, especially those regulated by statute.
- Understand and explain how and when a contract of agency is terminated.
- Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.

## **TEACHING METHOD**

The course will be presented by means of *viva voce* lectures. There is a handout for the course, which the students receive, and which provides the basic structure and material for the lectured course. 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 or statutes 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 (please refer to the Survival Guide). Students are expected to keep their own records of the number of lectures that they have not attended. There are no tutorials in this portion of the course.

## **COURSE CONTENT**

### **A INTRODUCTION: THE NATURE OF AGENCY**

Agency  
 Empowered and unempowered agents  
 Representation  
 Authority

The process of authorisation

The contract of mandate  
 The contract of employment  
 Independent agents  
 Composite contracts

### **B SOME PRELIMINARY ISSUES RELATING TO AGENCY POWER**

Capacity

Legality  
Possibility of performance  
Formalities

The power to buy and sell land

## C THE ORIGIN AND EXTENT OF AGENCY POWER

Actual authority

Express authority  
Tacit authority  
By operation of law  
Ratification

Apparent authority and the relationship to estoppel

## D THE OBLIGATIONS OF THE AGENT

The agent's residual obligations are: (1) to do what he or she has been instructed to do; (2) to exercise care, skill and diligence; (3) to impart information; (4) to advise; (5) to act in good faith; (6) to account.

## E THE OBLIGATIONS OF THE PRINCIPAL

The principal's residual obligations are: (1) to pay the agreed remuneration, if any; (2) to account; and (3) if the agent is a mandatary, to indemnify the agent in certain instances.

## F RELATIONS BETWEEN THE PRINCIPAL AND THIRD PERSONS

Named principals, unnamed principals and undisclosed principals  
Misrepresentation and non-disclosure

## G RELATIONS BETWEEN THE AGENT AND THIRD PERSONS

## H THE TERMINATION OF THE POWER TO ACT AS AGENT ON BEHALF OF A PRINCIPAL

### **RESOURCES**

The following sources: *LAWSA* Vol 17 "Mandate and Negotiorum Gestio"; AJ Kerr *The Law of Agency* 4th edition (2006); Peter Havenga *et al General Principles of Commercial Law*, 5<sup>th</sup> ed (2004); Robert Sharrock *Business Transactions Law* 6<sup>th</sup> ed, Juta & Co (2004); and Du Bois *et al Wille's Principles of South African Law* 9<sup>th</sup> ed (Juta).

## STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to :)</b>	<b>Assessment Criteria (What <i>evidence</i> must the student provide to show that they are competent? The student must be able to :)</b>	<b>Assessment Tasks (The evidence will be <i>gathered</i> in the following way. The student may be expected to :)</b>
<p>Understand and explain the essential elements of a valid contract of agency, and how the agency contract differs from other forms of contract.</p>	<ul style="list-style-type: none"> <li>- Define the essential elements of a contract of agency, and how agency, mandate and representation differ.</li> <li>- Describe and explain the requirements that have to be satisfied for these elements to exist.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the various elements and requirements are.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the requirements that have to be met for one of the elements to be satisfied, and how mandate, representation and agency interrelate.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> <li>- Solve authentic legal problems with regard to agency contracts.</li> </ul>
<p>Understand and explain the sources of agency power.</p>	<ul style="list-style-type: none"> <li>- Discuss the sources of agency power.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these various sources of power.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining one or another of these sources.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> <li>- Solve authentic legal problems with regard to agency contracts.</li> </ul>
<p>Understand and explain the legal duties that are imposed upon principals and agents, and the consequences that flow if these duties are breached.</p>	<ul style="list-style-type: none"> <li>- Define the various legal duties.</li> <li>- Describe and explain how these duties impact upon principals and agents respectively.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what these legal duties are.</li> <li>- Describe and explain the remedies that may flow if these duties are breached.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the various legal duties imposed upon principals and agents respectively, and the remedies available where such duties are breached.</li> <li>- Solve authentic legal problems with regard to agency contracts.</li> </ul>

Understand and explain the features of certain special forms of agency relationship, especially those regulated by statute.	<ul style="list-style-type: none"> <li>- Discuss the important or unique features of special/common agency relationship.</li> <li>- Discuss the legal requirements that attach to certain common forms of agency relationships regulated by statutory enactments and constitutional principles.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the legal features of special forms of agency contract or agency contracts regulated by statute.</li> <li>- Solve authentic legal problems with regard to agency contracts.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- State the relevant law, and discuss the relevant legal precedents with regard to that issue.</li> <li>- 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.</li> </ul>	<ul style="list-style-type: none"> <li>- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents.</li> </ul>

### **Assessment Strategy**

The final mark for the Agency module is comprised of the following components:

- Examination: 35 marks out of a 70-mark examination.
- Class work: 15 marks out of a class mark of 30.

These totals will be added to the results in the Insurance and Credit Agreement modules and converted into a percentage (see the comment on the examination below).

### **Agency Test**

There is one test for the Agency module. There is no assignment for the Agency module. The test will constitute the class work component (counting 15 marks) for the Agency module, and the test date will be communicated to students in due course. The test will contain questions equivalent to that which may be found in the November examination, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory.

### **Examination**

One two-hour paper will be written in November. The examination will be out of 70 marks. The Agency component is 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.

## **B INSURANCE**

### **INTRODUCTION**

#### **Overview**

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

- To provide students with an understanding of the nature and essential elements of a contract of insurance.
- To provide students with an understanding of how the insurance contract differs from other forms of contract.
- To provide students with an understanding of the legal effects of a contract of insurance.
- To ensure that students are aware of the legal duties imposed upon both the insurer and the insured, as well as of the consequences that may flow if these duties are breached.
- To make students aware of the special requirements imposed by statute that attach to certain forms of insurance contract.

#### **Credit Value**

3.5 Credits.

#### **Assumptions of Prior Learning**

In order to successfully 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 insurance.
- 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.

- (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 insurance.

### **Intended Specific Outcomes for Insurance**

The Insurance 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 insurance.
- (b) Understand and explain some of the key legal consequences of entering into a contract of insurance.
- (c) Understand and explain the legal duties that are imposed upon the insurer and the insured, as well as the consequences that flow if these duties are breached.
- (d) Understand and explain how certain statutes regulate insurance law.

### **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is a handout for the course, which the students receive, and which provides the basic structure and material for the lectured course. 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 or statutes 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 (please refer to the Survival Guide). Students are expected to keep their own records of the number of lectures that they have not attended. There are no tutorials in this portion of the course.

### **COURSE CONTENT**

#### General Insurance Law

- A. Introduction
- B. Formation of the Insurance Contract
- C. Insurable Interest
- D. Duty to Disclose Material Facts
- E. Warranties
- F. Duration of the Insurance Contract
- G. The Agent
- H. The Risk
- I. Subrogation



- J. Reinstatement
- K. Loss
- L. Over-insurance and Under-insurance
- M. Double Insurance
- N. Prescription of Claims

## RESOURCES

The core reading and study material for this course are the leading judgments and statutes on the course content set out in A-N above. The judgments and statutes are accessible either in printed or electronic form in the Alastair Kerr Law Library. For a full list of prescribed cases and statutes see the course hand-out.

Although there is not a single prescribed textbook for this Insurance Law course, the lecturer will make use of the texts below. Students are encouraged to refer to these texts to the extent that the course hand-out cites particular sections from the texts as either recommended or prescribed reading.

M Reinecke *et al General Principles of Insurance Law* (2013), LexisNexis Butterworths: Durban. (this is the book reproducing the LAWSA chapter referred to below).

M Reinecke *et al* 'Insurance' in WA Joubert (ed) *The Law of South Africa* Vol 12(1) (2012), Butterworths: Durban.

D Millard *Modern Insurance Law in South Africa* (2013) Juta & Co Ltd: Cape Town

DM Davis *Gordon and Getz: The South African Law of Insurance* (1993), 4<sup>th</sup> edition, 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 Law Library.

## STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to :)</b>	<b>Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)</b>
Understand and explain the essential elements of a valid contract of insurance.	<ul style="list-style-type: none"> <li>- Define the essential elements of a contract of insurance.</li> <li>- Describe and explain the requirements that have to be satisfied for these elements to exist.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the various elements and requirements are.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the requirements that have to be met for one of the elements to be satisfied.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>

Understand and explain some of the key legal consequences of entering into a contract of insurance.	<ul style="list-style-type: none"> <li>- Discuss some of the important consequences of entering into a contract of insurance, and the legal problems that can be associated with these issues.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these legal consequences.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining one or another of the legal consequences of entering into an insurance contract.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
Understand and explain the legal duties that are imposed upon the insurer and the insured, and the consequences that flow if these duties are breached.	<ul style="list-style-type: none"> <li>- Define the various legal duties.</li> <li>- Describe and explain how these duties impact upon the insurer and insured respectively.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what these legal duties are.</li> <li>- Describe and explain the remedies that may flow if these duties are breached.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the various legal duties imposed upon the insurer and insured respectively, and the remedies available where such duties are breached.</li> </ul>
Understand and explain how certain statutes regulate insurance law.	<ul style="list-style-type: none"> <li>- Discuss the important or unique features of the Short-Term and Long-Term Insurance Acts.</li> <li>- Discuss the legal requirements that attach to contracts concluded in terms of this legislation.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the legal features of insurance contracts concluded in terms of this legislation.</li> </ul>

### **Assessment Strategy**

The final mark for the Insurance module is comprised of the following components:

Examination: 20 marks out of a 70-mark examination.

Class work: 15 marks out of a class mark of 30.

These totals will be added to the results in the Agency and Credit Agreements modules and converted into a percentage (see the comment on the examination below).

### **Insurance Assignment**

There is one test for the Insurance module. The test will constitute the class work component (counting 15 marks) for the Agency module, and the test date will be communicated to students in due course. The test will contain questions equivalent to that which may be found in the November examination, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory.

## **Examination**

One two-hour paper will be written in November for the composite course. The examination will be out of 70 marks, of which Insurance will count 20 marks. The questions will require students 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' performance.

## **EVALUATION**

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

## **C CREDIT AGREEMENTS**

### **Overview**

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

- To provide the students with an understanding of the core elements of credit agreements as defined in the National Credit Act.
- To ensure students are aware of the consequences of concluding a credit agreement.
- To ensure students are aware of some of the key practical consequences of the National Credit Act in so far as debt review and summary judgment is concerned.

### **Credit Value**

1.5 Credits.

### **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.
- (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 credit law.

## **Intended Specific Outcomes for Credit Agreements**

The Credit Agreement 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 features of a credit agreement.
- (b) Understand and explain what the consequences are of concluding a credit agreement
- (c) To understand and explain some of the key practical consequences of dealing with a credit agreement.
- (d) Apply the knowledge acquired during the course to solve practical problems with regard to credit agreements.

## **TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. There is a short handout for the course, which the students receive, and which provides the basic structure of the lectured course. 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 or statutes 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, but guest lecturers will be delivering lectures on specific aspects of credit law relevant to practice.

## **COURSE CONTENT**

1. Definitions of types of credit transaction
2. The credit contract
3. The issuing of credit, and reckless credit
4. Debt review procedures

## **RESOURCES**

The core reading and study material for this course are the leading judgments and statutes on the aspects of the law of insurance 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 the course handout. The statutes are accessible either in printed or electronic form.

As far as textbooks are concerned, recommended texts are:

Otto *The National Credit Act Explained* 4 ed (LexisNexis, 2016)

Otto et al *Guide to the National Credit Act* [looseleaf] (LexisNexis, 2008).

## STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to:)</b>	<b>Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)</b>
Understand and explain the key features of a credit agreement	<ul style="list-style-type: none"> <li>- Define the various types of credit agreements.</li> <li>- Describe and explain the requirements that have to be satisfied for these to exist.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the requirements that have to be met for one of the elements to be satisfied.</li> <li>- Write case notes on the any leading precedents discussed and examined during the course.</li> </ul>
Understand and explain what the consequences are of concluding a credit agreement.	<ul style="list-style-type: none"> <li>- Discuss some of the important consequences of entering into a credit contract, and the legal problems that can be associated with these issues.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these legal consequences.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining one or another of the legal consequences of entering into an insurance contract.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
To understand and explain some of the key practical consequences of dealing with a credit agreement.	<ul style="list-style-type: none"> <li>- Explain debt review procedures.</li> <li>- Describe and explain how credit law impacts on summary judgment proceedings.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the relevant legal principles are.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the various legal duties imposed upon the insurer and insured respectively, and the remedies available where such duties are breached.</li> </ul>
Apply the knowledge acquired during the course to solve practical problems with regard to credit agreements.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- State the relevant law, and discuss the relevant legal precedents with regard to that issue.</li> <li>- 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.</li> </ul>	<ul style="list-style-type: none"> <li>- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents.</li> </ul>

## **Assessment Strategy**

The final mark for the Insurance module is comprised of the following components:

Examination: 15 marks out of a 70 mark examination.  
Class work: no class mark

The exam total will be added to the results in the Agency and Insurance module and converted into a percentage (see the comment on the examination below).

## **Test**

There will be no test for this aspect of the course, as it comes right at the end of the fourth term.

## **Examination**

One two-hour paper will be written in November. The examination will be out of 70 marks. The credit component will be out of 15. 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.

## **EVALUATION**

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