

LAW OF AGENCY, INSURANCE & CREDIT AGREEMENTS – 2010

The Law of Agency, Insurance & Credit Agreements is a final year LLB credit. Each subject takes up half of the course time. Agency will be offered in term 3, and Insurance & Credit Agreements in term 4. For the 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 the 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 the students with a thorough understanding of the sources of agency power.
- To ensure that the students are aware of the legal duties imposed upon principal and agents and the consequences that may flow if these duties are breached.
- To make the students aware of the special requirements that attach to certain special forms of agency relationship, 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 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 the law of agency.

Intended Specific Outcomes for Agency

The Agency 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 agency, and how the agency contract differs from other forms of contract.
- (b) Understand and explain the sources of agency power.
- (c) Understand and explain the legal duties that are imposed upon principals and agents, and the consequences that flow if these duties are breached.
- (d) Understand and explain the features of certain special forms of agency relationship,, especially those regulated by statute.
- (e) Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.

TEACHING METHODS

Teaching will be in the form of discussion of the course material in the lectures. Students are provided with a synopsis dealing with the changes brought about by the new Constitution and recent legislation. The notes are separated into lecture topics. There is a selection of important cases that should be consulted. Students are expected to read the cases and the relevant chapters on the lecture topics to be covered in the lectures. The lecture will be used as a discussion forum for the material set out in the notes. Lecture attendance is compulsory.

COURSE CONTENT

1 Agency, representation and mandate

2 Sources of agency power

- Express authority (nature and extent of authority)
- Implied authority
- Authority by operation of law
- Ostensible authority (estoppel)
- Ratification

3 Delegation and revocation of authority

4 Different kinds of agents

- Auctioneers
- Brokers
- Estate Agents.
- The Estate Agent’s claim for commission – criteria for determining when entitled to commission
- Factors

5 The legal effect of agency

- The relations between the principal and the agent
- Duties of the agent. Liability of an agent to a third party with whom he contracted on behalf of a non-existent principal
- Duties of the Principal

6 The relations between the Principal, Agent and Third Parties

- The doctrine of the undisclosed principal

7 Termination of Agent’s Authority

RESOURCES

On Agency see 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*, 5th ed (2004); Robert Sharrock *Business Transactions Law* 6th ed, Juta & Co, (2004); and Du Bois *et al Wille’s Principles of South African Law* 9th ed (Juta).

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 essential elements of a valid contract of agency,	- Define the essential elements of a contract of agency, and how agency, mandate and	- Write short essays, supported by authority,

<p>and how the agency contract differs from other forms of contract.</p>	<p>representation differ.</p> <ul style="list-style-type: none"> - Describe and explain the requirements that have to be satisfied for these elements to exist. - Demonstrate an understanding of the court decisions that have authoritatively determined what the various elements and requirements are. 	<p>explaining the requirements that have to be met for one of the elements to be satisfied, and how mandate, representation and agency interrelate.</p> <ul style="list-style-type: none"> - Write case notes on the leading precedents discussed and examined during the course.
<p>Understand and explain the sources of agency power.</p>	<ul style="list-style-type: none"> - Discuss the sources of agency power. - Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these various sources of power. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining one or another of these sources. - Write case notes on the leading precedents discussed and examined during the course.
<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"> - Define the various legal duties. - Describe and explain how these duties impact upon principals and agents respectively. - Demonstrate an understanding of the court decisions that have authoritatively determined what these legal duties are. - Describe and explain the remedies that may flow if these duties are breached. 	<ul style="list-style-type: none"> - 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.
<p>Understand and explain the features of certain special forms of agency relationship, especially those regulated by statute.</p>	<ul style="list-style-type: none"> - Discuss the important or unique features of special/common agency relationship. - Discuss the legal requirements that attach to certain common forms of agency relationships regulated by statutory enactments and constitutional principles. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining the legal features of special forms of agency contract or agency contracts regulated by statute.
<p>Apply the knowledge acquired during the course to solve practical problems with regard to agency contracts.</p>	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - 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 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 modules and converted into a percentage (see the comment on the examination below).

Agency Test

There is one test for the Agency module, which is written late in the second term. The test will be out of 15 marks, and students have 40 minutes in which to complete the test. The test is written in a class period. 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 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.

EVALUATION

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

B INSURANCE

INTRODUCTION

Overview

The purpose of the insurance 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 the students with a thorough understanding of the essential elements of a contract of insurance, and how the insurance contract differs from other forms of contract.
- To provide the students with a thorough understanding of the legal effects of a contract of insurance.
- To ensure that the students are aware of the legal duties imposed upon the insurer and the insured, and the consequences that may flow if these duties are breached.
- To make the students aware of the special requirements imposed by statute that attach to certain forms of insurance contract.
- To ensure the students understand the application of the Road Accident Fund Act.
- To assist students in being able to identify and solve authentic legal problems with regard to insurance contracts and claims from the Road Accident fund.
- To familiarise students with legal concepts and terminology commonly encountered in the law of insurance and in Road Accident Fund claims.

Credit Value

3.5 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 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, and the consequences that flow if these duties are breached.
- (d) Understand and explain how certain statutes regulate insurance law.
- (e) Understand and explain the scope and application of the Road Accident Fund Act.
- (f) Apply the knowledge acquired during the course to solve practical problems with regard to insurance contracts and claims from the Road Accident Fund.

TEACHING METHODS

The course will be presented by means of *viva voce* lectures. There is a relatively thorough handout for the course, which the students receive, and which provides the basic structure of the lectured course. The handout is not comprehensive, though: some topics will be covered orally in class only, and students will be expected to take their own notes in lectures to supplement the handout. 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. 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

Road Accident Fund

- A. Introduction
- B. When will the Fund be Liable?
- C. Limited Liability: Conveyance of Passengers
- D. Exclusion of Liability
- E. Proposed amendments to the Act
- F. Right of Recourse by the Fund
- G. Procedural Requirements
- H. Prescription of Claims

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:

General Insurance Law

M Reinecke *et al* *General Principles of Insurance Law* (2002), 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 (2002), Butterworths: Durban.

DM Davis *Gordon and Getz: The South African Law of Insurance* (1993), 4th edition, Juta: Cape Town.

Road Accident Fund

H Daniels *Road Accident Fund Practitioners Guide* (2004), available on *My Lexis Nexis* under 'Motor Law'.

M Reinecke *et al* 'Insurance' in WA Joubert (ed) *The Law of South Africa* Vol 12 (2002), Butterworths: Durban.

The Road Accident Fund website: www.raf.co.za

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.

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 essential elements of a valid contract of insurance.	<ul style="list-style-type: none"> - Define the essential elements of a contract of insurance. - Describe and explain the requirements that have to be satisfied for these elements to exist. - Demonstrate an understanding of the court decisions that have authoritatively determined what the various elements and requirements are. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining the requirements that have to be met for one of the elements to be satisfied. - Write case notes on the leading precedents discussed and examined during the course.
Understand and explain some of the key legal consequences of entering into a contract of insurance.	<ul style="list-style-type: none"> - Discuss some of the important consequences of entering into a contract of insurance, and the legal problems that can be associated with these issues. - Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these legal consequences. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining one or another of the legal consequences of entering into an insurance contract. - Write case notes on the leading precedents discussed and examined during the course.

<p>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.</p>	<ul style="list-style-type: none"> - Define the various legal duties. - Describe and explain how these duties impact upon the insurer and insured respectively. - Demonstrate an understanding of the court decisions that have authoritatively determined what these legal duties are. - Describe and explain the remedies that may flow if these duties are breached. 	<ul style="list-style-type: none"> - 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.
<p>Understand and explain how certain statutes regulate insurance law.</p>	<ul style="list-style-type: none"> - Discuss the important or unique features of the Short-Term and Long-Term Insurance Acts. - Discuss the legal requirements that attach to contracts concluded in terms of this legislation. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining the legal features of insurance contracts concluded in terms of this legislation.
<p>Understand and explain the scope and application of the Road Accident Fund Act.</p>	<ul style="list-style-type: none"> - Describe the purpose of this legislation. - Discuss the important features of this legislation. - Explain how and in what circumstances a claim can be brought against the Road Accident Fund. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining the legal features of this legislation. - Write short essays, supported by authority, explaining how, and in what circumstances, a claim may be brought against the Fund.
<p>Apply the knowledge acquired during the course to solve practical problems with regard to insurance contracts and claims from the Road Accident Fund.</p>	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - 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 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 module and converted into a percentage (see the comment on the examination below).

Insurance Test

There is one test for the Insurance module, which is written late in the fourth term. The test will be out of 15 marks, and students have 5 minutes reading time, and 40 minutes in which to complete the test. The test is written in a class period. 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, of which Insurance will count 20 marks. 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.

C CREDIT AGREEMENTS

INTRODUCTION

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 a thorough 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 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 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
5. Credit agreements and summary judgment proceedings

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* (LexisNexis, 2006)

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

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 key features of a credit agreement	<ul style="list-style-type: none"> - Define the various types of credit agreements. - Describe and explain the requirements that have to be satisfied for these to exist. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining the requirements that have to be met for one of the elements to be satisfied. - Write case notes on the any leading precedents discussed and examined during the course.
Understand and explain what the consequences are of concluding a credit agreement.	<ul style="list-style-type: none"> - Discuss some of the important consequences of entering into a credit contract, and the legal problems that can be associated with these issues. - Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these legal consequences. 	<ul style="list-style-type: none"> - Write short essays, supported by authority, explaining one or another of the legal consequences of entering into an insurance contract. - Write case notes on the leading precedents discussed and examined during the course.
To understand and explain some of the key practical consequences of dealing with a credit agreement.	<ul style="list-style-type: none"> - Explain debt review procedures. - Describe and explain how credit law impacts on summary judgment proceedings. - Demonstrate an understanding of the court decisions that have authoritatively determined what the relevant legal principles are. 	<ul style="list-style-type: none"> - 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.
Apply the knowledge acquired during the course to solve practical problems with regard to credit agreements.	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - 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 Insurance module is comprised of the following components:

Examination: 15 marks out of a 70 mark examination.

Class work: no class mark (too late in the term)

These totals will be added to the results in the Agency 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.

