

Environmental Law

Elective: 2021



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1. COURSE DESCRIPTION

Environmental Law is an elective course offered to final-year LLB students in the Faculty of Law.

It seeks to enable students to understand and analyse the legal rules relating to the environment. It therefore explores the legal, social, economic and philosophical issues raised by attempts to protect and conserve the environment. More specifically, the course examines some of the fundamental principles of law relating to natural resource conservation and utilisation, and land-use planning and development. Issues of enforcement and the international dimension which has shaped much of the direction that environmental law in South Africa has taken will be considered. Crucial to any application of environmental law in South Africa is an understanding of the role played by the Constitution, which will also be examined. A core focus of the course will be on the National Environmental Management Act which provides the underlying framework for environmental law.

2. ASSUMPTIONS OF PRIOR LEARNING

In order to successfully complete this course, students should

- Be capable of communicating competently in written and spoken English;
- Be able to work/study independently by reading, extracting and analysing relevant information from various sources of law;
- Know how and where to access resources, and so be capable of using the library and electronic resources;
- Be capable of applying legal problem-solving techniques;
- Have the ability to follow appropriate legal referencing conventions in written work.

3. OUTCOMES

3.1 Critical outcomes

Apart from the knowledge and skills which relate specifically to Environmental law, it is intended that by the end of the course students should demonstrate the ability to:-

- collect, understand and analyse information from various sources of information (cases, legislation and journal articles).
- communicate effectively through class debates and presentations.
- explain in writing the principles of law in legal and social contexts.
- use independent research skills, including the use of technology for legal research.
- identify and solve problems.

3.2 Specific Outcomes

It is intended that by the end of the course students should be able to:

- Define and explain the concept of environmental law.
- Critically explain the jurisprudential basis for environmental protection and management.
- Provide an overview of the development of environmental law in South Africa.
- Critically analyse the importance of the inclusion of the environmental clause in the Bill of Rights chapter of the South African Constitution.
- Identify and explain different legal environmental management tools.
- Evaluate the instruments containing environmental law principles as they currently exist and suggest law reforms where necessary.

4. TEACHING METHOD

Teaching will be by means of online lectures and if needed, online video lectures to promote active learning. It is therefore essential that students prepare themselves in advance for participation in the discussion by doing the appropriate research and reading. This approach is intended to promote critical and analytical thinking.

5. COURSE CONTENT

1. Introduction & Environmental Law in South Africa

- Sources, Scope and definition of environmental law
- Jurisprudential basis for protecting the environment.
- Legal norms and standards underpinning environmental management
- The South African Constitution & Environmental legislation
- Locus Standi

Readings:

The constitution of the Republic of South Africa, 1993 & 1996.

The National Environmental Management Act, 107 of 1998.

Promotion of Administrative Justice Act 3 of 2000.

Mineral and Petroleum Resources Development Act 28 of 2002

Case law:

Director, Mineral Development, Gauteng Region and Others v Save the Vaal Environment and Others 1999 (2) SA 709 (SCA)

Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC)

Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture 2007 (10) BCLR 1059 (CC) 2007 (11) BCLR 1230 (SCA)

MEC: Department of Agriculture, Conservation and Environment and Another v HTF Developers (Pty) Limited 2008 (2) SA 319 (CC)

Hichange investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products and Others 2004 (2) SA 393 ECD

Minister of Public Works and Others v Kyalami Ridge Environmental Association and Another (Mukhwevho Intervening) 2001 (3) SA 1151 (CC)

BP Southern Africa (Pty) Limited v Mec for Agriculture, Conservation, Environment & Land Affairs (03/16337) [2004] ZAGPHC 18

MEC for Agriculture, Conservation, Environment and Land Affairs, Gauteng v Sasol Oil and Another [2006] 2 All SA 17 (SCA)

Van Huyssteen and others v. Minister of Environmental Affairs and Tourism and others 1996 (1) SA 283 (C)

Ferreira v Levin NO and Others 1996 (1) SA 984 (CC)

Paola v Jeeva NO and Others [2003] 4 All SA 433 (SCA)

2. International Environmental Law

Readings:

J Glazewski *Environmental Law in South Africa* 2nd ed (2005/9): Chapter 2.

M Kidd *Environmental Law* (2011): Chapter 3.

Various treaties which will be listed in lectures.

3. Administration & enforcement of Environmental Law in South Africa

Readings:

J Glazewski *Environmental Law in South Africa* 2nd ed (2005/9):

M Kidd *Environmental Law* (2011)

Cases law:

Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (4) SA 490 (CC)

Gamevest (Pty) Ltd v Regional Land Claims Commissioner, Northern Province and Mpumalanga, and Others 2003 (1) SA 373 (SCA).

Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 (CC).

Permanent Secretary Department of Education and Welfare Eastern Cape and Another v Ed-U-College (PE) (Section 21) 2001 (2) SA 1 (CC)
Western Cape Minister of Education v Governing Body, Mikro Primary School & another 2006 (1) SA 1 (SCA)
Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999 (1) SA 374 (CC)
Director, Mineral Development, Gauteng Region and Others v Save the Vaal Environment and Others 1999 (2) SA 709 (SCA)
Earthlife Africa (Cape Town) v Director General Department of Environmental Affairs and Tourism and Another [2006] 2 All SA 44 (C)
Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others [2017] 2 All SA 519 (GP)
Carephone (Pty) Ltd v Marcus NO & others 1999 (3) SA 304
Moletsane v The Premier of the Free State & Another 1995 (9) BCLR 1285 (O)
Hekpoort Environmental Preservation Society and Another v Minister of Land Affairs and Others 1997 (1) BCLR 1537 (CC)
Evans and Others v Transitional Metropolitan Substructure of Llandudno/Hout Bay and Another 2001 (2) SA 342 (C)
MEC: Department of Agriculture, Conservation and Environment and Another v HTF Developers (Pty) Limited 2008 (2) SA 319 (CC)
Hichange investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products and Others 2004 (2) SA 393 ECD

4. Environmental Management

- Identification of environmental management tools in South Africa
- Evaluation and assessment of environmental management in SA.

Case Law:

Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others [2017] 2 All SA 519 (GP)

S v Blue Platinum Ventures (Pty) Limited and Another [2015] ZAGPPHC 980
(unreported)

S v Nkomati Anthracite (Pty) Ltd [2013] SH 412/13 (unreported)

S v Anker Coal and Mineral Holdings S.A. (Pty) Ltd 2009 8/11 //
SHEEPMOOR CAS 26/06/2009 (unreported)

York Timbers Proprietary Limited v National Director of Public Prosecutions
2015 (3) SA 122 (GP)

Silvermine Valley Coalition v Sybrand Van Der Spuy Boerderye and Others,
(‘the Silvermine case’) 2002 (1) SA 478 (C)

Eagles Landing Body Corporate v Molewa NO and Others (‘Eagles Landing case’)
2003 (1) SA 412 (T).

5. Selected Topics: Natural Resource Conservation & Management (optional depending on time constraints)

6. Conclusion

Recommended Textbooks:

For your general understanding of the course, the following material is recommended:

- M Kidd *Environmental Law* (2011).
- A Paterson & LJ Kotzé (eds) *Environmental Compliance & Enforcement in South Africa: Legal Perspectives* (2009).
- J Glazewski *Environmental Law in South Africa* 2nd ed (2005)
- PW Birnie and AE Boyle *International Law and the Environment* (2002).
- P Sands *Principles of International Environmental Law* (2003).
- G Bradfield *et al* (eds) *Environmental Justice & the Legal Process* (1999).
- P Henderson *Environmental Laws of South Africa Vol 1 and Vol 2* (1996) – periodically updated.
- H.A. Strydom and N.D. King (eds) *Environmental Management in South Africa* (2009) (previously edited by RF Fuggle and MA Rabie).
- Kotze. *etal. South African environmental law through the cases* (2008)

7. ASSESSMENT

Intended Specific Outcomes: Upon successful completion this course, students will be able to:	Assessment Criteria: Students must provide evidence that they are able to:
1. Define and explain the concept of environmental law.	Give an account of what environmental law encompasses.
2. Critically explain the jurisprudential basis for environmental protection and management.	Clearly set out the different jurisprudential approaches underpinning environmental protection and management.
3. Provide an overview of the development of environmental law in South Africa.	<ul style="list-style-type: none"> • Discuss the development of environmental law, both prior to, and after, 1994. • Analyse the development of environmental law in South Africa in relation to the influence of international environmental law.
4. Critically analyse the importance of the inclusion of the environmental clause in the Bill of Rights chapter of the South	Give an analytical account of the environmental clause, and its enforcement, with specific reference to case law and academic commentary.

African Constitution.	
5. Identify and explain different legal environmental management tools.	<ul style="list-style-type: none"> • Identify the different tools used in environmental management and • give a detailed account of these and the manner in which they are used.
6. Evaluate the instruments containing environmental law principles as they currently exist and suggest law reforms where necessary.	<ul style="list-style-type: none"> • Evaluate the content and adequacy of environmental laws, • critically explain the shortfalls and • make informed suggestions for law reform, based on knowledge of relevant law / legal commentary.

Assessment: Class work: 30 marks
 Examination: 70 marks
 Total: 100 marks

Details of assessments will be announced but you will have two assessments comprising 15 marks each (30 in total)

Examination

Due to Covid-19 which has resulted in most of the 2021 academic calendar continuing online, the November examination will be in line with Faculty and University guidelines and details will follow in due course.