



**RHODES UNIVERSITY**  
*Where leaders learn*

# Commercial Law 202 Paper 1: Company Law Course Outline 2011

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## **PURPOSE STATEMENT**

The purpose of this course is to build on the foundational principles of Company law learnt in Commercial law 1. Given the restricted time, it will not be possible to teach every aspect of company law; therefore, the course will focus on selected topics in company law in South Africa. The focus of the course is on pre-incorporation contracts, office-bearers and their duties, general meetings and resolutions, majority rule and the protection of minority interests, capital maintenance rules, shares, and company groupings. The course is intended to convey the substance of the law without all the details required by those who intend to become legal practitioners.

## **ASSUMPTION OF PRIOR LEARNING**

Before you start this course, you must be able to:

- Write and communicate in coherent English;
- Demonstrate a thorough knowledge of the general principles of the law of contract;
- Demonstrate a working understanding of the law of agency;

- Be capable of independent learning;
- Understand the system of judicial precedent and the important role precedent plays in our law;
- Read, analyse and extract principles from law reports and other source material; and
- Apply legal problem solving techniques to practical situations.

## **OUTCOMES**

### **CRITICAL OUTCOMES**

Apart from the knowledge and skill that relate directly to Company Law, the following skills are central to the study and practice of law which the course intends to enhance. By the end of this course you should be able to:

- *Identify* and *solve* practical legal problems;
- *Organise* and *manage* yourself and your work load;
- *Analyse* and *evaluate* the information conveyed during lectures and contained in the course handout;
- *Communicate* effectively in class debate, discussions, seminars and written examinations; and
- Use technology.

### **SPECIFIC OUTCOMES**

By the end of this course, students will be able to achieve the following outcomes:

- Understand the purpose and requirements of pre-incorporation contracts as well as alternative methods to enter into contracts prior to incorporation;
- Understand the different ways of company groupings and the legislative regulation of such groupings;
- Have a firm understanding of the principle of corporate democracy and the statutory protection of minority interests;
- Understand the position of a director in a company and the rights and duties that flow from such office;
- Have an overall understanding of the capital maintenance rules in company law;
- Understand the role of an auditor in the company and legislative requirements of the office;

- Be able to define and recognise insider trading;
- Be able to recognise, from a given set of facts, the applicable company law and apply that law to the facts in order to solve the problem.

## **ASSESSMENT STRATEGY**

There will be two lectures for the Company Law module each week in the third term only (Mondays 3<sup>rd</sup> Period, and Fridays 2<sup>nd</sup> Period).

The class work component of the course amounts to 30% of the final mark and comprises of two tests. This Company law module will only be tested in the first test on **Monday 15 August 2011** at **7pm** in the **Great Hall**.

**IT IS A DP REQUIREMENT FOR STUDENTS TO WRITE THE TESTS AND YOU WILL ONLY BE EXCUSED IF YOU HAVE A VALID LEAVE OF ABSENCE.**

The test and examination will contain:

- Multiple choice questions;
- Problem questions which require the application of statute, common law and case law to solve practical issues;
- Case notes; and/or
- Theory type questions, in which students are required to describe, explain and critically evaluate the current law.

## **READING MATERIAL**

There is no prescribed textbook for this course but recommended texts are:

- Benade *et al Entrepreneurial Law incorporating the New Companies Act Manual* (2009) LexisNexis, Durban
- Delpont *The New Companies Act Manual* (2009) LexisNexis, Durban

The following statutes are also important:

- **Security Services Act 36 of 2004**
- Companies Act 61 of 1973;
- **Auditing Profession Act 26 of 2005;**

- Corporate Laws Amendment Act 24 of 2006;
- **Companies Act 71 of 2008; and**
- **Companies Amendment Act 3 of 2011.**

## **EVALUATION**

Evaluation is carried out every three years using the Rhodes University Web-based Evaluation Assistant and it is conducted by a staff member who has not been involved in the course. Students respond to a list of questions by awarding a rating in addition to responding to some global questions. The responses are analysed by the Academic Development Centre who compile a report for the lecturer. The results of the report are then conveyed to students. This provides an opportunity for the lecturer to interact with students and reach consensus on how aspects of the course can be improved. It also provides an opportunity for students to reflect on their own learning strategies and commitment to the course.

## **HOW TO ACCESS THE NOTES AND LECTURE SLIDES**

Click on **Start**; click on **Run**; type in <\\jackal\user\home\dept\lawr> and open the folder for 2011; then open the folder called **Company Law - Col 202 Paper 1**.

## **COURSE OUTLINE**

### **Topic 1: Pre-incorporation Contracts**

- (i) The Need for Pre-Incorporation Contracts
- (ii) The Statutory Arrangement

s 35 of the 1973 Act

- (iii) Liability of the Promoter
- (iv) Retrospective Effect

*Peak Lode Gold Mining Company v Union Government*

- (v) Contracts for the Benefit of Third Parties (*Stipulatio Alteri*)
- (vi) Companies Act 71 of 2008

s 21(5)

### **Topic 2: Corporate Conduct & Division of Powers**

- (i) Introduction

*Lipschitz v Wolpert & Abrahams*

- (ii) Employees

*Ganes v Telkom Namibia*

(iii) Office Bearers

s 86; s 88(2)

Section 2.10 of the King Code on Corporate Governance 2002

*In re Maidstone Buildings Provisions*

*Panorama Developments v Fidelis Furnishing Fabrics*

*In re Newspaper Proprietary Syndicate*

*Nelson v James Nelson & Sons*

*Moresby White v Rangeland*

(iv) The Promoter

s 95(1)(j)

(v) Division of Corporate Functions and Powers

*John Shaw & Sons v Shaw*

*LSA UK v Impala Platinum Holdings*

*Ben-Tovim v Ben-Tovim*

### **Topic 3: Directors**

(i) Introduction

s 66(2); (11)

*Howard v Herrigel*

*In re Forest of Dean Coal Mining Co*

*Ferguson v Wilson*

(ii) Appointment, Election and Disqualification of Directors

s 66(4)(a)(i); (7)(a) and (b); s 67(1)(a)-(b)

s 68(1)

s 69(6)(a)-(b); (7); (8); and (9)(a)

*Ex Parte Bennet*

*Ex Parte Barron*

*Ex Parte Tayob*

(iii) Removal of Directors

s 71(1); (2); (3); and (4)

(iv) Directors' Rights

s 66(8); and (9)

(v) Directors' Duties

s 77(2)(a)

ss 75 and 76 of the 2008 Act

*Howard v Herrigel*

(1) Fiduciary Duty to Avoid a Conflict of Interest

s 75(5); s 76(3)(b)

*Robinson v Randfontein Estates Gold Mining*

*Atlas Organic Fertilizers v Pikkewyn Ghwano*  
*Sibex Construction v Injectaseal*  
*Movie Camera Company v Van Wyk*  
*Regal (Hastings) v Gulliver*  
*Magnus Diamond Mining Syndicate v Macdonald & Hawthorne*  
*Industrial Development Consultants v Cooley*  
*CyberScene v i-Kiosk Internet and Information*

(2) Fiduciary Duty to Exercise his/her Powers in Good Faith (*Bona Fide*)  
s 76(3)(a) and (b)

(3) Fiduciary Duty to Exercise his/her Powers for their Proper Purpose  
s 75(3) and (4); and s 76(3)(a)  
*Piercy v Mills*  
*Punt v Symons*

(4) Fiduciary Duty not to Fetter his/her Discretion  
*Coronation Syndicate v Liliensfeld and the New Fortuna Co*  
*Fulham Football Club v Cabra Estates*  
*Mears v African Platinum Mines*  
*S v Shaban*

(5) Duty to Exercise Reasonable Care and Skill in Carrying Out his/her Office  
s 76(3)(c)(i)-(ii)  
*Fisheries Development Corporation of SA Ltd v Jorgensen*  
*In re Brazilian Rubber Plantations and Estates*

(vi) Prohibition on Insider Trading  
s 73(2); 77 of the Security Services Act

#### **Topic 4: Auditors**

(i) Introduction  
s 2; and 3 of the Auditing Profession Act;

(ii) Functions of the IRBA  
s 4; 5; 6; 7; and 8 of the Auditing Profession Act;

(iii) Appointment of Auditor  
ss 90(2)(a); (2)(b)(i)-(vi); (2)(c); (4); (5); and (7) of the 2008 Act

(iv) Duties of the Auditor  
s 1 and 45 of the Auditing Profession Act

(v) The Liability of the Auditor  
(a) Civil Liability  
s 46; s 58(2) of the Auditing Profession Act

(b) Criminal Liability

s 52 of the Auditing Professions Act  
s 214 (1)(a)-(c) of the 2008 Act

### **Topic 5: General Meetings and Resolutions**

- (i) Introduction
- (ii) Annual General Meetings (AGMs)  
s 61(7); (8)  
ss 62(1); (2); (2A); (3)
  - (iii) Proceedings at the Meeting
    - (a) Quorum  
ss 64(1); (2); (3)
    - (b) Proxies  
s 58(1)
    - (c) Voting Rights  
s 1; s 37(2)(a)-(b)
  - (iv) Resolutions at Meetings  
s 65(1)
    - (a) Ordinary Resolutions  
s 65(7); (8)
    - (b) Special Resolutions  
s 65(10); (11)(a)-(c)
    - (c) Relaxation of the usual percentage rules  
s 65(8)(a)-(b); (10)(a)-(b)
    - (d) Resolutions by Unanimous Consent  
s 60  
*Dublin v Diner*  
*Cane v Jones*

### **Topic 6: Majority Rule and Protection of Minority Interests**

- (i) The Majority Rule in *Foss v Harbottle*
  - (a) Majority Rule  
*Sammel v President Brand Gold Mining*
  - (b) Separate Juristic Personality
- (ii) Protection of Minority Interests

(a) Personal Action

*Brown v British Abrasive Wheel*  
*Dafen Tinplate v Llanelly Steel*

(b) Derivative Action

s 266(1) of the 1973 Act  
s 165(1); (2)(a)-(d) of the 2008 Act

**Topic 7: Capital Maintenance Rules**

(i) Introduction

s 4(1)(a); (b)(i)-(ii)

(ii) Acquisition of Own Shares

s 35(3)  
s 46(1)(b)-(c)  
s 48(2)(a); (3); (6); (7); (8)(a)

(iii) Distributions are to be authorised by the board

s 1; s 46(1)(a)-(c)

**Topic 8: Offer of Shares**

(i) Introduction

(ii) Application and Interpretation of Concepts

s 95(e); (f); (g); (h); (i); (j); (k); (l)

(iii) Kinds of Offers

(a) Offer for Subscription

(b) Offer for Sale

(iii) Offers That are Not Offers to the Public

s 96

(iv) Advertisements relating to offers

s 98(2)(a)-(b); (3)

(v) General Restrictions on Offers to Public

s 99(1); (2); (5)  
*Gold Fields v Harmony Gold Mining Company*

(vi) The Prospectus

s 100 (1); (2); (9)

(vii) Liability for Untrue Statements in Prospectus

s 104(1)



## **Topic 9: Company Groupings**

- (i) Introduction
- (ii) Holding and Subsidiary Companies

s 3

- (iii) Distinguishing between a Holding and a Subsidiary Company

s 1

- (iv) Nature of the Relationship

*Saloman v Saloman*

- (v) Consequences of the Relationship
- (vi) Transactions between Related Companies