

# **COURSE OUTLINE**

## **COMPANY LAW A**

**FEBRUARY 2017**

**ES NWAUCHE**

## GENERAL INFORMATION

### **PURPOSE**

This course seeks to inform educate and engage student towards the objective of understanding the framework within which company groupings in South Africa, as defined in the Companies Act 71 of 2008 operate and are regulated.

### **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.

### **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,
- Use technology,
- Recognise problem-solving contexts in company law.

### **SPECIFIC OUTCOMES**

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

- Identify the different theories of incorporation to provide a crucial context in which students will appreciate how concepts and principles of company law in South Africa are shaped by different objectives.
- Identify distinguish and characterise the different forms of companies.
- Provide a factual and theoretical understanding of the rights, duties, obligations and liabilities of the stakeholders in a corporate environment

- Understand internal regulatory oversight.
- Appreciate and simulate the legal political social and cultural factors that are likely to significantly affect the South African corporate environment.
- Understand and evaluate the human rights perspectives of companies.
- Appreciate the corporate social responsibility of companies and their role in promoting social justice.
- Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises.

### **TEACHING METHODS AND LEARNING RESPONSIBILITY OF STUDENTS**

This course aims to analyse and critique the law in its present state and consider the imminent changes to this area of law. To this end:

- A combination of formal lecturing and class discussions will be conducted.
- Formal lecturing will be facilitated by a case method and a case study method. To this end appropriate cases and the narratives of a legal dilemma will be the basis of lectures and class discussion.
- All lecture materials including power point presentations will be placed on RUConnected well in advance to free up time for class discussions.
- Students are expected to take responsibility for their own learning by reading and preparing the course material provided.
- The required reading for the entire course is part of this course outline.

### **STUDENT ASSESSMENT**

<b>SPECIFIC OUTCOMES</b>  <u>On completion of this course, you should be able to:</u>	<b>ASSESSMENT CRITERIA</b> <b>(What evidence must you provide to show that you are competent?)</b>  <u>You must be able to:</u>	<b>ASSESSMENT TASKS</b>  <u>The evidence will be gathered in:</u>
<ul style="list-style-type: none"> <li>• Identify the different theories of incorporation to provide a crucial context in which students will appreciate how concepts and principles of company law in south Africa are shaped by different objectives.</li> </ul>	<ul style="list-style-type: none"> <li>• Apply statutory and common law principles.</li> <li>• Identify critical aspects of case law.</li> <li>• Demonstrate an understanding of the concepts and principles contained in the case law and statutes.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Class discussion and seminars</li> <li><input type="checkbox"/> Class assignments</li> <li><input type="checkbox"/> Test</li> <li><input type="checkbox"/> Examination</li> </ul>

<ul style="list-style-type: none"> <li>Identify distinguish and characterise the different forms of companies.</li> </ul>	<ul style="list-style-type: none"> <li>Describe and explain various companies.</li> <li>Discuss the advantages and disadvantages of each company.</li> <li>Identify the relevant legislative provisions. <ul style="list-style-type: none"> <li>Identify critical aspects of case law regarding each company.</li> </ul> </li> </ul>	<input type="checkbox"/> Class discussion and seminars <input type="checkbox"/> Class assignments <input type="checkbox"/> Test <input type="checkbox"/> Examination
<p>Provide a factual and theoretical understanding of the rights, duties, obligations and liabilities of the stakeholders in a corporate environment</p>	<input type="checkbox"/> Identify different stakeholders in a company  <input type="checkbox"/> Describe the rights, duties, obligations and liabilities of stakeholders.  <input type="checkbox"/> Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of stakeholders.  <input type="checkbox"/> Understand the impact of majority rule & protection of minority interests in a company.  <input type="checkbox"/> Appreciate the rules for the management of companies.  <input type="checkbox"/> Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations.	<input type="checkbox"/> Class discussion and seminars <input type="checkbox"/> Class assignments <input type="checkbox"/> Test <input type="checkbox"/> Examination
<p>Understand internal regulatory oversight</p>	<p>Identify the nature and extent of powers of auditors.</p>	<input type="checkbox"/> Class discussion and seminars <input type="checkbox"/> Class assignments <input type="checkbox"/> Test <input type="checkbox"/> Examination
<p>Appreciate and simulate the legal political social and cultural factors that are likely to significantly affect the South African corporate environment.</p>	<p>Describe and predict some of these factors such as</p> <ul style="list-style-type: none"> <li>- the nature and extent of corporate governance codes;</li> <li>--South Africa's economic hegemony in Africa; and</li> <li>- the evolving recognition of companies as subjects of international law</li> </ul>	<input type="checkbox"/> Class discussion and seminars <input type="checkbox"/> Class assignments <input type="checkbox"/> Test <input type="checkbox"/> Examination
<p>Apply the knowledge acquired during the course to solve practical problems with</p>	<p>-Identify the relevant legal problem or issue.</p>	<input type="checkbox"/> Test <input type="checkbox"/> Examination

regard to business enterprises	-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.	
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### **ASSESSMENT STRATEGY**

- The class work component of the course amounts to no more than 40% of the final mark and comprises of one test and 1 group assignment:
  - The group assignment for this year will revolve around human rights issues as well as corporate social responsibility of companies in the Makana Municipality
- The remaining 60% of the final mark comprises of one two hour examination which will contain:
  - Problem questions which require the application of statute, common law and case law to solve practical issues;
  - Case notes; and
  - Theory type questions, in which students are required to describe, explain and critically evaluate the current law.

### **DP CERTIFICATE**

Attendance at lectures is compulsory and a register will be taken during each lecture. It is accepted that the ideal of 100% attendance is generally not attainable, however, students may miss no more than five lectures for this course. Students are responsible for collecting, retaining and presenting all relevant documents (doctor's letters etc) in respect of the lectures missed and filling out the necessary LOA (leave of absence) form.

Please be reminded that signing for another student constitutes fraud and any student caught doing so will be prosecuted in terms of the student disciplinary code.

A student who misses more than five lectures over in the course will not have met the course requirements and as a result such student's DP certificate will be removed and he/she will not be allowed to write the examination.

### **READING MATERIAL**

#### Prescribed texts:

- Cassim *et al* *Contemporary Company Law* 2nd edition, Juta (2012)
- Companies Act 71 of 2008
- Reading Lists of journal articles and other materials is attached.

## **COURSE OUTLINE**

### **1. INTRODUCTION AND OVERVIEW**

- 1.1 Essential Attributes of a Company
- 1.2 Theories of Incorporation
- 1.3 Stakeholders in a Company
- 1.4 Challenges of Corporate Personality
- 1.5 Objectives of South African Company Law Reform
- 1.6 Principal Features of the Companies Act 2008
- 1.7 Corporate Governance Codes

### **2. THE CORPORATE ENTITY**

- 2.1 The Effect of the Status of Corporate Entity
- 2.2 Piercing the Corporate Veil
- 2.3 Human Rights and Corporations in South Africa

### **3. TYPES AND CATEGORIES OF COMPANIES**

- 3.1. Non-Profit Company
- 3.2. Profit Company
  - 3.2.1. State Owned Company
  - 3.2.2. Private Company
  - 3.2.3. Personal Liability Company
  - 3.2.4. Public Company
- 3.3. External Company
- 3.4. Close Corporations
- 3.5. Company groupings and related persons

### **4. FORMATION OF THE COMPANY**

- 4.1 Introduction
- 4.2 Name of the Company
- 4.3 Registration of the Company
- 4.4 Memorandum of Incorporation
- 4.5 Pre-incorporation contracts
- 4.6 Promoters

## **5. CORPORATE CAPACITY AGENCY AND LIABILITY**

- 5.1 Legal Capacity of the Company
- 5.2 Civil Liability of a Company
  - 5.2.1 The Doctrine of Constructive Notice
  - 5.2.2 The Turquand Rule
  - 5.2.3 Division of Corporate Functions and Powers
- 5.3 Corporate criminal liability

## **6. DIRECTORS AND SECRETARIES**

- 6.1 Introduction
- 6.2 Relationship with the Company
- 6.3 Types of Directors
- 6.4 Appointment and Removal of Directors
- 6.5 Indemnification and Director's Insurance
- 6.6 Directors' Rights Duties and Liabilities
- 6.7 Secretaries

## **7. SHARE CAPITAL AND SHAREHOLDERS**

- 7.1 Share Capital
  - 7.1.1 Nature of Shares
  - 7.1.2 Classes of Shares
- 7.2 Membership of a Company
  - 7.2.1 Shareholders
  - 7.2.2 Capacity and Acquisition of Membership
  - 7.2.3 Termination of Membership
  - 7.2.4 Nominee Shareholders
- 7.3 Transfer of Securities

## **8. GENERAL MEETINGS AND RESOLUTIONS**

- 8.1 General Meetings
- 8.2 Resolutions at Meetings

## 9. AUDITORS

- 9.1. Appointment of Auditor
- 9.2. Resignation of Auditor
- 9.3. Rotation of Auditor
- 9.4. Rights Duties and Liability of Auditors
- 9.5. Audit Committee

## 10. MAJORITY RULE, PROTECTION OF MINORITY INTERESTS AND REMEDIES

- 10.1 The Majority Rule in *Foss v Harbottle*
- 10.2 Protection of Minority Interests

## 11. CORPORATE GOVERNANCE

- 11.1 Principles and recommendations of King III & IV

### **READING LIST (Journal Articles etc)**

- M. Havenga "Directors' Exploitation of Corporate Opportunities and the Companies Act 71 of 2008" 2013 *TSAR* 257
- G van Zyl & M Smit "Delinquent Directors" 2016 8 *Without Prejudice* 19.
- D Subramanien "'Unconscionable Abuse'-Section 20(9) of the Companies Act 71 of 2008" 2014 35 *Obiter* 150.
- R Jooste " Observations on the Impact of the 2008 Companies Act on the Doctrine of Constructive Notice and Turquand Rule" 2013 130 *SALJ* 464.
- HC Schoeman " The Rights Granted to Trade Unions Under the Companies Act 71 of 2008" 16 *PELJ* 236
- SM Luiz " The Companies Act 71 of 2008 and the Disclosure of and Rights of Access to Information About Securities" 2014 *SA Merc LJ* 167
- J Katzew " Crossing the Divide Between the Business of the Corporation and the Imperatives of Human Rights- The Impact of Section 7 of the Companies At 71 of 2008" 2011 *SALJ* 686
- M Gwanyana " The South African Companies Act and the Realisation of Corporate Human Rights Responsibilities" 2015 18 *PELJ* 3101
- V Borg-Jorgensen & K Van der Linde " Corporate Criminal Liability in South Africa: Time for Change? (Part I ) 2011 *TSAR* 452
  - (Part 2) 2011 *TSAR* 684
- D Farisani " Corporate Homicide: What can South Africa Learn from Recent Developments in English Law" 2009 42 *CILSA* 210.



- CN Nana “ Corporate Criminal Liability in South Africa: The Need to Look Beyond Vicarious Liability” 2011 55 *Journal of African Law* 86.
- L. Smit “ *Human Rights Litigation Against Companies in South African Courts: A Response to Mankayi v AngloGold Ashanti* 2011 (3) SA 237 (CC).” 2011 27 *SAJHR* 354.
- MF Cassim “ The Contours of Profit-Making Activities of Non-Profit Companies: An Analysis of the New South African Companies Act” 2012 56 *Journal of African Law* 243.
- D Biltchitz “ Corporate Law and the Constitution: Towards a Binding Human Rights Responsibilities for Corporations” 2008 124 *SALJ* 754.
- R Cassim “ Piercing the Veil Under Section 20(9) of the Companies Act of 2008: A New Direction” 2014 26 *SA Merc LJ* 307.
- R Bradstreet “ Implications of the Re-Enacted Discretionary Power to Grant Judicial Relief to Directors in Section 77(9) of the Companies Act 2008” (2015) *SA Merc LJ* 145.
- K. Idensohn “ The Fate of Foss under the Companies Act 2008 2014 *SAMerc LJ* 138
- M. Lehloeny & T Kgarabjang “ Defining the limits of the ‘Oppression Remedy’ in the wake of sec 163 of the Companies Act 71 of 2008- *Grancy Properties Limited v Manala* [2013] 3 ALL SA 111 (SCA) 36 *Obiter* 511
- MF Cassim “ When Companies are Harmed By their Own Directors: The Defects in the Statutory Derivative Action and the Cures Part 1” (2013) 25 *SA Merc LJ* 168.
- MF Cassim “ When Companies are Harmed By their Own Directors: The Defects in the Statutory Derivative Action and the Cures Part 2” (2013) 25 *SA Merc LJ* 301.
- SM Luiz “ The Companies Act 71 of 2008 and the Disclosure of and Rights of Access to Information About Securities” (2014) *SA Merc LJ* 167
- R Stevens & P De Beer “ The Duty of Care and Skill, and Reckless Trading: Remedies in Flux” (2016) 28 *SA Merc LJ* 251.
- T Wiese “ The Use of Alternative Dispute Resolution Methods in Corporate Disputes: the Provisions of the Companies Act of 2008” 2014 *SA Merc LJ* 668.
- J Yeats “ Putting Appraisal Rights into Perspective” 2014 *Stell LR* 328.
- M. Seligson “ Dissenting Minority Shareholders Appraisal rights: Reappraising the Appraisal Remedy in Section 164 of the Companies Act 71 2008” 2016 7 *Business Tax and Company Law Quarterly* 1
- HGJ Beukes & WJC Swart “ Blurring the Dividing Line Between the Oppression Remedy and the Derivative Action: *Kudumane Investment Holdings Ltd v Northern Cape Manganese Company (Pty) Ltd*” (2012) *SA Merc LJ* 467.
- HGJ Beukes & WJC Swart “ *Peel v Hamon J&C Engineering (Pty) Ltd*: Ignoring the Result- Requirement of section 163(1)a of the Companies Act and Extending the Oppression Remedy Beyond its Statutorily Intended Reach” 2014 17 *PELJ* 1691.
- R Cassim “ Delinquent Directors Under the Companies Act 71 of 2008: *Gihwala v Grancy Property Limited*” 2016 *ZASCA* 35.