

# **Environmental Law**

**Elective: 2023**



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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**

The course will be delivered through live contact sessions for one double lecture per week, and if needed, supplementary online videos / meetings will be arranged to promote active and engaged learning. It is therefore essential that students prepare themselves in advance for participation in the class 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
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### **2. International Environmental Law**

### **3. Administration & enforcement of Environmental Law in South Africa**

### **4. Environmental Management**

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

### **5. Selected Topics: Natural Resource Conservation & Management**

#### **Case law:**

*Administrator, Transvaal and Firs Investments (Pty )Ltd v Johannesburg City Council 1971 (1) SA 56 (A)*

*Bato Star v Minister of Environmental Affairs and Tourism and others 2004 (4) SA 490 (CC)*

*Biowatch Trust v Registrar, Genetic Resources 2009 (6) SA 232 (CC)*  
(see HC judgment listed below)

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

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

*Eagles Landing Body Corporate v Molewa* 2003 (1) SA 412 (T)

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

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

*Joint Owners of Remainder ERF 5216 Hartenbos v MEC of Local Government...* [2010] ZAWCHC 197

*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)

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

*Minister of Environmental Affairs ad Tourism and Others v Phambili Fisheries and another* (2003) 2 All SA 616 (SCA)

*National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] 4 All SA 225 (SCA)

*Silvermine Valley Coalition v Sybrand van der Spuy Boerderye* 2002 (1) SA 478 (C)

*Sustaining the Wild Coast NPC and others v Minister of Mineral Resources and Energy and others (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMK) (1 September 2022) – ‘Shell’ judgment*

*Sustaining the Wild Coast NPC and others v Minister of Mineral Resources and Energy and others (3491/2021) [2021 ZAECGHC 118; [2022] 1 All SA 796 (ECG); 2022 (2) SA 585 (ECG) (28 December 2021) – ‘Shell’ judgment*

*Trustees for the time being of the Biowatch Trust v The Registrar Genetic Resources and others (23005/2002) [2005] ZAGPHC 135 23 February 2005 (see CC judgment listed above)*

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

*Verstappen v Port Edward Town Board 1994 (3) SA 569 (D)*

*Wildfire Society of Southern Africa v Minister of Environmental Affairs and Tourism 1996 (3) SA 1095 (TK)*

*Wildlife and Environment Society of Southern Africa (WESSA) V MEC for Economic Affairs, Environment and Tourism, Eastern Cape Provincial Government 2005 (6) SA 123 (E)*

### **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* 2<sup>nd</sup> 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)

## 6. ASSESSMENT

<b>Intended Specific Outcomes:</b> Upon successful completion this course, students will be able to:	<b>Assessment Criteria:</b> 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"> <li>• Discuss the development of environmental law, both prior to, and after, 1994.</li> <li>• Analyse the development of environmental law in South Africa in relation to the influence of international environmental law.</li> </ul>
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"> <li>• Identify the different tools used in environmental management and</li> <li>• give a detailed account of these and the manner in which they are used.</li> </ul>
6. Evaluate the instruments containing environmental law principles as they currently exist and suggest law reforms where necessary.	<ul style="list-style-type: none"> <li>• Evaluate the content and adequacy of environmental laws,</li> <li>• critically explain the shortfalls and</li> <li>• make informed suggestions for law reform, based on knowledge of relevant law / legal commentary.</li> </ul>

**Assessment and Examination:**      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)