



RHODES UNIVERSITY
Where leaders learn

Faculty of Law

LAW OF PARTNERSHIPS AND TRUSTS

1. INTRODUCTION

1.1 Purpose of the course

This course aims at exposing you to some of the mediums available for conducting business and holding assets in South Africa, namely sole proprietorships, co-operatives, partnerships and trusts. (Companies are dealt with in Company Law A and B.) The emphasis of the course will fall primarily on the nature, establishment, functioning and winding-up of these structures. The course aims to give you both the theoretical basis upon which these entities (particularly partnerships and trusts) exist in South African law, and also practical examples and exercises so that you will be confident in dealing with partnership and trust matters as a legal practitioner.

1.2 Credit Value

10 Credits

Assumptions of Prior Learning (or Learning assumed to be in place)

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.

- Apply legal problem-solving techniques to practical situations.

2. OUTCOMES

2.1 Critical Cross-Field Outcomes

Students will be able to:

- a) identify and solve practical legal problems
- b) work in a team
- c) organize and manage themselves
- d) collect, analyse and evaluate information from diverse sources
- e) communicate effectively
- f) use technology to aid their research
- g) recognize problem-solving contexts in partnership and trust law

2.2 Specific Intended Outcomes

This course is designed so that after successfully completing this course, you should be able to achieve the following outcomes:

- Provide an overview of the concepts and principles of sole proprietorships, co- operatives, partnerships and trusts in South African law.
- Identify and distinguish between the essential elements of each business or asset holding form.
- Evaluate and appreciate the comparative advantage(s) and disadvantage(s) of each business or asset holding medium.
- Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various entities.
- Apply the knowledge acquired during the course to solve practical problems with regard to business and asset-holding entities.

3. TEACHING METHODS AND STUDENTS' LEARNING RESPONSIBILITIES

This course aims to analyse and critique the law in its present state and suggest possible reforms. To this end, a combination of formal lecturing, class discussions, and seminars will be conducted. Emphasis will fall on discussing and evaluating relevant case law and legislation and the practical implications of the material studied.

Students are expected to take responsibility for their own learning by reading and preparing themselves in advance of each lecture. Students are expected to utilize the reading list provided in the course outline, and students will be referred to additional articles, cases, and the internet.

resources during lectures. Both for class discussions/group participation and examinations, cases and practical examples will be utilised as the basis for learning the principles of law in issue. In order to gain a clearer perspective of South African law, students will be referred to, and will be expected to read, material relating to the law in other jurisdictions.

4. COURSE/MODULE CONTENT AND READING LIST

The course covers four types of entities which are commonly used in South Africa either as mediums through which to conduct business, or for the holding of assets. These are:

- Sole proprietorships
- Partnerships
- Co-operatives
- Trusts

The main focus of the course is on partnerships and trusts, which will be examined from a legislative, a case law, and above all, from a practical point of view. The emphasis in lectures, tests, and assignments will be on equipping students to deal with real legal problems involving these entities, which they are likely to face in practice as attorneys, advocates, or corporate lawyers. The course will not deal with testamentary trusts except in cases where reference to a testamentary trust is necessary in order to illustrate a general trust principle. Testamentary trusts are dealt with in a separate course: the Law of Succession and Administration of Estates.

READING LIST

NB: There will inevitably be some additions and deletions to this list as we go through the course

PART 1 – SOLE PROPRIETORSHIPS

Unit 1: Sole Proprietorships

Rule 14 of the Uniform Rules of Court

Ex-TRTC United Workers Front and Others v Premier, Eastern Cape Province 2010 (2) SA 114 (ECB)

Golden Harvest (Pty) Ltd v Zen-Don CC 2002 (2) SA 653 (O)

PART 2 – PARTNERSHIPS

Unit 2: Partnerships – Intro and Types of Partnerships

Muhlmann v Muhlmann 1981 (4) SA 632 (W)

Ponelat v Schrepfer 2012 (1) SA 206 (SCA)

Butters v Mncora 2012 (4) SA 1 (SCA)

Steyn v Hasse 2015 (4) SA 405 (WCC)

RD v TD 2014 (4) SA 200 (GP)

Booyesen v Stander 2018 (6) SA 528 (WCC)

Khan v Shaik 2020 (6) SA 375 (SCA)

Pezzutto v Dreyer & others 1992 (3) SA 379 (A)

Hughes v Ridley 2010 (1) SA 381 (KZP)

Unit 3: Rights and Duties of Partners

Lampakis v Dimitri 1937 TPD 138

Wegner v Surgeson 1910 TPD 571

Van de Merwe v Director of the Law Society of Namibia 2013 (1) NR 98 (HC)

Espag v Hattingh 2010 (3) SA 22 (SCA)

Herman v Faclier 1949 (4) SA 377 (C)

Geldenhuis 2005 (2) SA 74 (SCA)

Robson v Theron 1978 (1) SA 841 (A)

Nair v Chandler 2007 (1) SA 44 (T)

Morar v Akoo 2011 (6) SA 311 (SCA)

Unit 4: Relations Between Partners and Third Parties

Potchefstroom Dairies v Standard Fresh Milk Supply Co 1913 TPD 506

Goodrickes v Hall 1978 (4) SA 208 (N)

Spark v Palte Ltd 1956 (3) SA 27 (SR)

Muller v Pienaar 1968 (3) SA 195 (A)

Fundtrust v Van Deventer 1997 (1) SA 710 (A)

Karstein v Moribe and others 1982 (2) SA 282 (T)

Eaton & Louw v Arcade Properties 1961 (4) SA 233 (T)

Royal British Bank v Turquand (1856) 6 E&B 327

Rodrigues v Alves 1978 (4) SA 834 (A)

S v Coetzee 1997 (3) SA 527 (CC)

Standard Bank v Wentzel & Lombard 1904 TS 828

Bothma v Windsor 1996 (2) SA 75 (T)

Unit 5: Dissolution of a Partnership

Latham v Sher 1974 (4) SA 687 (W)

Ferela (Pty) Ltd v Craigie 1980 (3) SA 167 (W)

Perdikis v Jamieson 2002 (6) SA 356 (W)

Loots v Nieuwenhuizen 1997 (1) SA 361 (T)

PART 3 - COOPERATIVES

Unit 6: Cooperatives

CO-OPERATIVES ACT (14 OF 2005) as amended by the Co-operatives Amendment Act (6 of 2013)

TWK Agriculture v NCT Forestry Co-operative 2006 (6) SA 20 (N)

Poort Sugar Planters v Umfolozi Cooperative Sugar Planters 1960 (1) SA 531 (N)

Cape Dairy Co-operative v Ferreira 1997 (2) SA 180 (A)

Kaap Suiwelkoöperasie v Louw 2001 (2) SA 80 (SCA)

Kleinfontein Boerebelange Koopertief Beperk v Zeevaart (A912/2014) [2016] ZAGPPHC 645 (29 July 2016)

Nonzamo Cleaning Services Co-operative v Appie 2009 (3) SA 276 (CK)

National Bargaining Council v Glamour Fashions and others, Labour Appeal Court case DA04/2017 (unreported)

Heenop v Magaliesbergse Koringkoöperasie Bpk 1962 (4) SA 97 (T)

PART 4 - TRUSTS

Unit 7: Trusts - Introduction

Trust Property Control Act (57 of 1988)

Honoré's South African Law of Trusts (6th ed.) chapter 1

Zinn v Westminster Bank 1936 AD 89

Moravian Church Missionary Society v September (1909) 3 Buch AC 494

Twentyman v Hewitt (1833) 1 Menz 156

Raath v Nel 2012 (5) SA 273 (SCA)

Trusts Compared to Other Entities

Kempton Park/Tembisa Metropolitan Substructure v Kelder 2000 (2) SA 980 (SCA)

Conze v Masterbond 1996 (3) SA 786

Potgieter v Potgieter 2012 (1) SA 637 (SCA)

CIR v Smollan's Estate 1955 (3) SA 266 (A)

Holley v CIR 1947 (3) SA 119 (A)

Kemp v McDonald's Trustee 1914 CPD 1084 and 1915 AD 491

Braun v Blann & Botha 1984 (2) SA 850 (A)

Goodricke v Registrar of Deeds, Natal 1974 (1) SA 404 (N)

Thorpe and Others v Trittenwein and Another 2007 (2) SA 172 (SCA)

Council for the Advancement of the South African Constitution and Others v The Ingonyama Trust and Others 2021 (8) BCLR 866 (KZP)

Unit 8: FORMATION OF A TRUST

Honoré's South African Law of Trusts (6th ed.) chapter 3

Jarvis v Hawken 1959 (2) SA 594 (FSC)

Coetzee NO v Universiteit Stellenbosch 1959 (2) SA 172 (C)

Cowen v Estate Cowen 1932 CPD 39

Crookes NO v Watson 1956 (1) SA 277

Deedat v The Master 1995 (2) SA 377 (A)

Harter v Epstein 1953 (1) SA 287 (A)

Ex Parte Executor Estate Gluckman 1946 WLD 182

Minister of Education v Syfrets Trust Ltd NO 2006 (4) SA 205 (C)

Curators, Emma Smith Educational Fund v University of KZN 2010 (6) SA 518 (SCA)

In re Heydenrych Testamentary Trust 2012 (4) SA 103 (WCC)

In re BOE Trust Ltd and others 2013 (3) SA 236 (SCA)

Harper v Crawford 2018 (1) SA 589 (WCC)

Minister of the Interior v Confidence Property Trust 1956 (2) SA 365 (A)

The Trustee

Honoré's South African Law of Trusts (6th ed.) chapter 4

Re Estate Grayson 1939 SWA 11

Marais v Naude 1987 (3) SA 739 (A)

Van Rensburg v Smith 1978 (4) SA 638 (O)
Simplex v Van der Merwe 1996 (1) SA 111 (W)
Lupacchini v Minister of Safety and Security 2010 (6) SA 457 (SCA)
Kidbrooke Place Management Assn. v Walton 2015 (4) SA 112 (WCC)
Stander and others v Schwulst and others 2008 (1) SA 81 (C)
Mashoko v Mashoko/Chikosi Family Trust [2011] ZWHHC 12 (unreported)
Gowar v Gowar 2016 (5) SA 225 (SCA)
Law Society of the Cape of Good Hope v Randell [2015] 4 All SA 173 (ECG)

The Trustee's Duty to Give Security

Honoré's South African Law of Trusts (6th ed.) chapter 5
Ex parte Milton 1959 (3) SA 426 (C)

Unit 9 : Trust Administration

Honoré's South African Law of Trusts (6th ed.) chapter 6
Van der Merwe v Hydraberg Hydraulics 2010 (5) SA 555 (WCC)
Steyn v Blockpave (Pty) Ltd 2011 (3) SA 528 (FB)
Ex parte Knight 1946 CPD 800
Standard Bank v Swanepoel 2015 (5) SA 77 (SCA)
AAA Investments v Hugo [2010] ZAECGHC 78 (16 September 2010)
Harris v Fisher NO 1960 (4) SA 855 (A)
Groeschke v Trustee, Groeschke Family Trust 2013 (3) SA 254 (GSJ)
Hanekom v Voight 2016 (1) SA 416 (WCC)

Trusts and an Attorney's Ethical Duties

Dube v Road Accident Fund 2014 (1) SA 577 (GSJ)
RAF v Arendse 2003 (2) SA 490 (SCA)

Unit 10: SHAM TRUSTS AND ALTER-EGO TRUSTS

Rhodes LLM thesis by Rowan Stafford: A legal-comparative study of the interpretation and application of the doctrines of the sham and the alter-ego in the context of South African trust law : the dangers of translocating company law principles into trust law.

Land & Agricultural Bank v Parker 2005 (2) SA 77 (SCA)

Badenhorst v Badenhorst 2006 (2) SA 255 (SCA)

Brunette v Brunette 2009 (5) SA 81 (SE)

Rees v Harris 2012 (1) SA 583 (GSJ)

(FURTHER CASES WILL BE ADDED WHEN THIS SECTION IS LECTURED)

Constructive Trusts

Cameron, E. 'Constructive Trusts in South African Law: The Legacy Refused' (1999)
3 Edinburgh LR 341-58

Standard Bank v Van Rhyn 1925 AD 266

Yorkshire Insurance v Barclays Bank 1928 WLD 199

Rossiter v Barclays Bank 1933 TPD 374

Gold v Rosenberg [1997] 3 S.C.R. 767 (Canadian judgment)

Matabele Syndicate v Lippert (1897) 4 OR 372

De Villiers v James 1996 (2) ZLR 597 (SC)

Standard Bank v Koekemoer 2004 (6) SA 498 (SCA)

OTHER COMMERCIAL USES OF TRUSTS

E.E. Shultz; Retirement Heist: How Companies Plunder and Profit from the Nest
Eggs of American Workers (2011)

In Re American International Group Inc. 08-cv-5722, U.S. District Court, Southern
District of New York (Manhattan) (unreported US judgment)

Unit 12: Trusts Under Islamic Law

Suleiman, H; 'The Islamic Trust waqf: a Stagnant or Reviving Legal Institution?';
Electronic Journal of Islamic and Middle Eastern Law | Vol. 4 (2016), p.27

Ekurhuleni Metropolitan Municipality v Dada 2009 (4) SA 463 (SCA)

John Ngomoi v Mohamed Ally Bofu 1988 TLR 63 (HC) (Tanzanian judgment)

Unit 13: Actions for Breach of Trust

Honoré's South African Law of Trusts (6th ed.) chapter 8

Doyle v Board of Executors 1999 (2) SA 805 (C)

Gross v Pentz 1996 (4) SA 617 (A)

Desai-Chilwan v Ross 2003 (2) SA 644 (C)

Durandt v Fedsure General Insurance Ltd 2005 (3) SA 350 (SCA)

Aucamp v University of Stellenbosch 2002 (4) SA 544 (C)

Jowell v Bramwell-Jones 1998 (1) SA 836 (W)

Termination of a Trust

Honoré's South African Law of Trusts (6th ed.) chapter 10

Melville v Busane and another 2012 (1) SA 233 (ECP)

5. RESOURCES

The prescribed textbook for the course is: F du Toit; *South African Trust Law: Principles and Practice* (2nd ed) LexisNexis (2007). In addition, students are urged to also refer to either *Companies and Other Business Structures in South Africa* (2009) by Davis *et al*, or *Entrepreneurial Law* (4th ed, 2008) by Benade *et al*. Students will be referred during lectures to various other textbooks, journal articles, cases and internet resources.

6. STUDENT ASSESSMENT

SPECIFIC OUTCOMES On completion of this course, you should be able to:

ASSESSMENT CRITERIA (What evidence must you provide to show that you are competent?) You must be able to:

ASSESSMENT TASKS The evidence will be gathered in:

Provide an overview of the concepts and principles of entrepreneurial Law in South Africa.

Apply statutory and common law principles.

Identify critical aspects of case law.

Demonstrate and understanding of the concepts and principles contained in the case law and statutes.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Compare aspects of South African law with selected foreign laws.

Identify and distinguish between the essential elements of each business form.

Describe and explain the various business and asset holding structures.

Identify the relevant legislative provisions.

Identify critical aspects of case law regarding each business and asset holding form.

Demonstrate an understanding of the concepts and principles contained in the case law and statutes.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Evaluate and understand the comparative advantage(s) and disadvantage(s) of each business or asset holding structure.

Compare different business and asset holding mediums in respect of the limitations and requirements imposed by statute and the common law.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Provide an overview of the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Compare the various entities in respect of the advantages associated with each entity, having regard to practical situations.

Describe the rights, duties, obligations and liabilities of the parties involved in the various business and asset holding entities.

Class discussion /seminars / group participation

Class /group assignments

Test

Examination

Apply the common law and legislative principles in respect of the rights, duties, obligations and liabilities of the parties to the various business and asset holding forms.

Demonstrate an understanding of and apply the relevant principles of the law of agency and contract to practical situations.

Apply the knowledge acquired during the course to solve practical problems with regard to business enterprises and asset holding entities.

Identify the relevant legal problem or issue.

Tests

Examination

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.

7. ASSESSMENT STRATEGY

The class work component of the course amounts to 30% of the final mark and the remaining 70% comprises one two-hour examination, written in November.

Students are assessed for the class work component on the basis of one **compulsory assignment**, which is **due on the 17th of August 2023**, and one **compulsory test** on the **18th of September 2023**. Each will each count 15% towards the final mark of the course.

The test and examination will contain:

- Problem questions that 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.

NB: For those who will not be able to write the compulsory test, the makeup test will be in the form of an oral test, with the date(s) to be communicated in due course.

Attendance at lectures is compulsory, and a register will be taken. Students are responsible for ensuring that they have signed the attendance register. It is accepted that the ideal of 100% attendance is generally not attainable. A student 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. A student who misses more than the permissible number of lectures or who fails to write the test and/or assignment has not met the course requirements, and as a result, no DP certificate will be

8. CONTACT DETAILS

Should you wish to contact the lecturer, Dr L Katiyatiya, you may do so via e-mail: luyando.katiyatiya@ru.ac.za.