

LEGAL THEORY 1 2010

FOUNDATIONS OF LAW

AND

INTRODUCTION TO THE STUDY OF LAW

1. INTRODUCTION

1.1 Overview

Legal Theory is a three-year major subject in the BA, B SocSci, BCom and BSC curricula. Legal Theory is allowed as a credit for degrees in the Faculties of Humanities, Commerce and Science. A Legal Theory major in all the Faculties consists of Legal Theory 1, Legal Theory 2 and Legal Theory 3 according to a fixed curriculum. Credits in Legal Theory courses exempt a candidate from the equivalent papers in the LLB curricula. Please refer to the Rhodes University Calendar for more information.

On completion of the course the student should be able to assess and decide whether or not to continue with legal studies as well as to plan the appropriate academic route and cope with a more detailed study of legal topics.

- To provide insight into the nature and function of law
- To provide an overview of the various systems of law around the world
- To understand the hybrid nature of the South African legal system
- To introduce students to the basic principles of a human rights regime
- To provide an overview of the structure of the courts and the procedures which are followed in the courts
- To provide a brief overview of the law of contract, delict (wrongs) and criminal law
- To familiarise students with legal concepts and terminology
- To introduce students to the nature of legal reasoning
- To assist students in extracting principles from law reports and other source material

Each of the two components of Legal Theory 1 (i.e. Foundations of Law and Introduction to the Study of Law) can also stand alone as courses.

1.2 Credit Value [30]

This is calculated on the basis of 300 “notional hours” that a student would spend in lectures, tutorials, seminars, mock trials, court visits, learning for tests/exams etc over the year which translates into 11½ hours per week.

1.3 Assumptions of Prior Learning

- The student must have met the entrance requirements for the university and be able to communicate in written and spoken English at an NQF level 4 standard.
- The student must also be able to work/study independently and be capable of working in groups.
- The student must have basic computer literacy skills.

2. OUTCOMES

2.1 Critical Outcomes

Students will be able to:

- a) identify and solve problems
- b) work in a team
- c) organize and manage themselves
- d) collect, analyse and evaluate information
- e) communicate effectively
- f) recognize problem solving contexts
- g) participate as a responsible citizen
- h) explore education and career opportunities

2.2 Specific Intended Outcomes

The Legal Theory 1 course is designed so that students successfully completing this course should be able to achieve the following outcomes:

FOUNDATIONS OF LAW (Taught in the first semester)

- 1.) Outline and explain the different forms of dispute resolution in South African Law
- 2.) Describe and explain the structure and officers of the South African courts
- 3.) Provide an outline of criminal and civil procedure in South Africa
- 4.) Explain the sources of the modern South African legal system
- 5.) Describe and use the conventions of legal communication.

INTRODUCTION TO THE STUDY OF LAW (Taught in the second semester)

- 1.) Describe and explain the nature and purpose of law
- 2.) Understand legal concepts and terminology
- 3.) Describe the nature and purpose of rights and duties in law
- 4.) Provide an outline of some of the legal systems of the world
- 5.) Describe the divisions of law.

- 6.) Provide an outline of selected branches of public and private law (criminal law, contract and delict or law of wrongs).
- 7.) Demonstrate an ability to apply legal principles and case law to selected factual situations.

3. TEACHING METHODS

Lectures will be delivered using a combination of teaching styles which include the Socratic and semi-Socratic methods, using practical questions and real life cases and examples as a basis for explaining concepts. Powerpoint slides, overhead transparencies, case studies and supplementary material will also sometimes be supplied.

Students are expected to assume responsibility for their learning by reading ahead before the lecture and consolidating afterwards. Therefore the extent of your learning and knowledge at the end of the course will depend on the effort you put into the course.

4. COURSE/MODULE CONTENT

FOUNDATIONS OF LAW

- Forms of dispute resolution
 - ADR
 - Litigation: structure and officers of the Courts
- An outline of criminal and civil procedure
- Sources of the modern South African legal system

INTRODUCTION TO THE STUDY OF LAW

- An introduction to the nature and purpose of law
- An introduction to the nature and purpose of rights and duties
- An outline of the legal systems of the world
- Divisions of law and an outline of selected branches of public and private law [criminal law, contract, delict (wrongs)]

5. RESOURCES

Note: Students are also strongly encouraged to use the short loan section of the main library wherever possible for research assignments and tests.

Further reading is essential in a course of this type. Although there is no prescribed book, the following books are highly recommended:

J Church *et al Workbook for Introduction to the Law* (1996), 2nd edition Butterworths: Durban

HR Hahlo and E Kahn *The South African Legal System and its Background* (1985 reprint), Juta & Co: Kenwyn.

D Kleyn and F Viljoen *Beginners Guide for Law Students* 4th edition, (2010) Juta & Co: Kenwyn

Meintjies – Van der Walt et al *Introduction to South African Law: Fresh Perspectives* (2008) Pearson Prentice Hall: Cape Town

WJ Hosten et al *Introduction to South African Law and Legal Theory* 2nd edition, (1995) Butterworths: Durban

The lecturers will prescribe reading at the appropriate times and students are required to supplement their notes from these (and other) books.

Students are strongly advised to spend time browsing through the books in the library. There is a vast array of material and familiarity with the layout of the library will pay dividends when research is undertaken for assignments.

Students will be supplied with a copy of the Constitution during the course of the first semester and their student accounts will be debited with R70.00.

6. STUDENT ASSESSMENT

6.1 FOUNDATIONS OF LAW

| <p style="text-align: center;">Outcomes</p> <p>(On successful completion of this course you will be able to)</p> | <p style="text-align: center;">Assessment Criteria</p> <p>(What evidence must a student provide to show that they are competent?) The student must be able to:</p> |
|--|--|
| <p>1. Outline and explain the different forms of dispute resolution in South African law.</p> <p>(a) Alternative Dispute Resolution</p> <p>(b) Litigation: Structure and officers of the Courts.</p> | <p>1. Distinguish between the different forms of dispute resolution.</p> <p>2. Explain in relation to each of the forms of dispute resolution, what structures and officers are involved. See Foundations Handout for details.</p> <hr/> <p>1. Classify a particular factual situation as criminal or civil matter and decide the appropriate forum and procedure for obtaining a remedy or enforcing a right. [See Foundations of Law B General Handout for details.]</p> |
| <p>2. Explain the sources of the modern South African legal system.</p> | <p>1. Describe the basic values which underpin our legal system and practice of law.</p> |
| <p>3. Describe and use the conventions of legal communication to access and communicate information.</p> | <p>1. Access reference works and cases in the law library</p> <p>2. Extract the appropriate legal rules from source material</p> <p>3. Read a case, extract and apply the principles contained in it</p> <p>4. Write a case-note at an elementary level</p> <p>5. Communicate legal issues verbally and in writing in the correct manner</p> <p>6. Reference correctly and accurately according to basic referencing principles.</p> |
| <p>6.2 INTRODUCTION TO THE STUDY OF LAW</p> | |
| <p style="text-align: center;">Outcomes</p> <p>(On successful completion of this course you will be able to)</p> | <p style="text-align: center;">Assessment Criteria</p> <p>(What evidence must a student provide to show that they are competent?) The student must be able to:</p> |
| <p>1. Describe and explain the nature and purpose of law</p> | <p>1. Identify, analyse, extract and apply basic legal principles to a simple set of facts.</p> |
| <p>2. Understand legal concepts and terminology.</p> | <p>1. Use of appropriate legal language to demonstrate conceptual understanding.</p> |
| <p>3. Describe the nature and purpose of rights and duties in law.</p> | <p>1. Distinguish the nature of rights and duties and provide an elementary explanation to a lay person.</p> |

| <p style="text-align: center;">Outcomes</p> <p>(On successful completion of this course you will be able to)</p> | <p style="text-align: center;">Assessment Criteria</p> <p>(What evidence must a student provide to show that they are competent?) The student must be able to:</p> |
|---|---|
| <p>4. Demonstrate an understanding of the importance of comparative legal studies and be able to discuss and compare the major legal systems of the world</p> | <p>1. Undertake a basic comparative analysis and apply basic comparative methods.</p> |
| <p>5. Describe the divisions of law.</p> | <p>1. Classify and distinguish private and public law.</p> |
| <p>6. Provide an outline of selected branches of public and private law (criminal law, contract and delict).</p> | <p>1. Classify factual situations according to the various branches of the law and to distinguish between a crime, a delict and a contract.</p> <p>2. Decide the appropriate forum and procedure for obtaining a remedy or enforcing a right.</p> |
| <p>7. Demonstrate an ability to apply legal principles and case law to selected factual situations</p> | <p>1. Apply the applicable law to the relevant facts and provide appropriate legal remedy.</p> |

EXAMINATIONS

Examinations are compulsory.

- One three-hour paper will be written in June and the paper will be divided into two equal sections. Section A (50 marks) will be marked by Mrs Davies, while Section B (50 marks) will be marked by Prof N Goolam and Adv C Renaud. The June paper will examine the work covered in the Foundations of Law course.
- One three-hour paper will be written in November and the paper will be divided into two equal sections. Section A (50 marks) will be marked by Professor J. Campbell while section B (50 marks) will be marked by Mrs E Davies and Mrs Niesing. The November paper will examine the work covered in the Introduction to the Study of Law course.
- A credit (CR) will be given if a candidate has passed both Foundations of Law and Introduction to Law irrespective of the year or examination in which they were passed.
- An aggregated credit (ACR) will be given if the candidate has an aggregated mark of at least 50% for Foundations of Law and Introduction to Law (i.e. 100 or more out of 200) and has obtained at least 45% in the course failed.
- A non-continuing credit (NCR) will be given if the candidate has an aggregated mark of at least 50% for Foundations of Law and Introduction to Law (i.e. 100 or more out of 200) and has obtained between 40% and 44% in the course failed.

- Aggregation may take place only in respect of examinations written in the same academic year.
- After the completion of the November examinations, the Dean of Law may recommend to the Deans of Humanities, Commerce and Science that a student with an overall aggregation average of 49% be raised to 50% to enable the student to pass with an ACR or NCR. Overall aggregation averages below 49% (i.e. less than 98 out of 200) will **NOT** be rounded up to 50% for this purpose.

If students wish to challenge the course work component exam marks, it must be done by the first Friday of the first and third terms in respect of June and November exams respectively.

Students who wish to be admitted to LLB 2 must have at least 65% in Legal Theory 1 as well as an overall average of 65% for three non-law courses studied in that year. Students who do not meet these criteria must follow the five-year route.

For further information regarding supplementary examinations, please refer to the Law Faculty's *Survival Guide*.

TESTS

There will be four tests during the year i.e. two per semester course. Tests will be written on the following dates:

Monday 1 March 2010 at 7pm, Great Hall

Wednesday 14 April 2010 at 7pm, Barrett Lecture Theatre 1

Wednesday 18 August 2010 at 7pm, Great Hall

Thursday 30 September 2010 at 7pm, Great Hall

Tests are compulsory and should be taken seriously. Tests assist borderline students and consolidate knowledge, making it easier to learn for the examinations. The marks for the four tests together with the tutorial assignment marks count towards a student's class record. The class record constitutes 30% of the final mark.

Note: Weak tests and poorly researched essays will count against you and adversely affect your overall results.

STUDENTS ARE REQUIRED TO IDENTIFY THEMSELVES AT ALL TESTS BY PRODUCING A VALID STUDENT CARD.

7. EVALUATION

The courses will be evaluated at regular intervals by way of student evaluations, teaching evaluations and peer evaluations of the staff lecturing the course conducted by other Law Faculty members and by external examiners/moderator's comments and reports on examination papers and the students' scripts.

Oral report backs will be given to students in class indicating problem areas, difficulties, suggestions, etc and what action can be taken, if necessary.

8. TUTORIALS

The class will be divided into groups for tutorial purposes. No permanent change of group may be made without the approval of Mrs Davies. Should a student miss a scheduled tutorial this must be made up by arrangement with Mrs Davies. Where students make up a tutorial, the onus is on the student to ensure his/her attendance is noted at the tutorial attended. The tutorial programme will be announced later. Do not report for any tutorials before being told to do so.

The tutorial programme forms part of the academic development component of Foundations of Law and Introduction to the Study of Law (See Annexure). The tutorial sessions will be led by members of staff, tutors or graduate assistants in the Law Department and will usually cover topics to be dealt with in assignments. Students will be required to prepare written work (Tutorial Assignments) comprising no more than **1 500** words and not less than **1 000** words. If the essay does not meet this minimum requirement, the mark will be 0%. There will be four Tutorial Assignments during the course of the year and the topics will be prescribed well before the due date. Assessment criteria and marking grids/guides will be given to the tutors and are to be attached by the students to their assignments when handed in. Your assignment must be accompanied by a cover page which you can find by doing the following:

Log on computer

Click on Start

Click on Run

Type in [\\Jackal\user\home\DEPTLAWR](#)

Open essay cover. Print out!

Tutorial Assignments also count towards the class record which constitutes 30% of the final mark.

Tutorial assignments are due at 12h30pm on the due date (See attached "important dates"). They are to be posed in your tutor's box opposite the Law Library. **NO INFORMAL EXTENSIONS** (i.e. extensions not supported by a formal Leave of Absence) **WILL BE GRANTED FOR ANY REASON WHATSOEVER**. This includes like computers crashed at 12h29 and similar such excuses. Any late essays will receive a mark of **0**. Under no circumstances may Tutorial Assignments be faxed or e-mailed to the tutor concerned.

Preparation for tutorial discussions and attendance at tutorials are **compulsory**. A register will be kept by the tutors and students who fail to hand in a Tutorial Assignment on time or who miss a tutorial without a valid excuse may be refused a DP certificate.

NOTE: Plagiarism, cheating or assisting a student in any test, tutorial assignment, essay or examination will result in disciplinary action being taken by the University against the student concerned.

9. SUPPLEMENTAL INSTRUCTION

Supplemental instruction (SI) is a free, voluntary, student-driven programme to support courses which have a reputation for being demanding. SI enables students to master course content while developing effective learning and study strategies.

SI is available to all students and statistics show that students who regularly attend SI sessions tend to get better results than those who do not, irrespective of whether or not they are at the top or the bottom of the ability range.

More details about SI will be given later.

10. THE LAW LIBRARY

Only students who have signed the required registration form will be allowed to borrow books from the library. Student cards must be produced in order to borrow a book. As a general rule, books may not be taken away from the library by Legal Theory 1 students. Senior law students have reserved desks in the library. A room in the library has been set aside for use by undergraduate students and students are free to use the desks in that room.

If you are unsure about anything in the library, ask the person on duty. He/she is paid to listen to you and to help you.

SHORT LOAN is a reserved collection of textbooks, recommended books, journals and photocopied notes set aside by lecturers. This ensures that essential reading material is available to students. You need your student card in order to take out items from the Short Loan section.

All items are listed on **OPAC** and alphabetically in the **Short Loan List**, a booklet on the circulation counter. Photocopied files are listed at the back of the catalogue.

- Ask the library assistant to fetch the item for you.
- A maximum of 2 items may be taken at a time.
- A book or notes may be taken for an hour only.
- Items in high demand may be restricted to shorter periods of time, as specified by the Librarian

Fines are charged for late returns of Short Loan items and further penalties may be imposed on those who keep items for long periods. Students who owe unpaid fines will not be permitted to make use of any Short Loan material. Fines for overdue Short Loan items are R2.00 per hour.

A compulsory library tutorial will be held during the first term to familiarise students with the Law Library. Further details will be given to students at the appropriate time.

11. DP CERTIFICATES (DULY PERFORMED CERTIFICATES)

The RU General Regulations read *inter alia* as follows:

“Subject to any exceptions approved by Senate, a student shall not be admitted to an examination in any course unless the Head of the Department concerned has certified that the student has satisfactorily attended the class meetings for the course under examination, and has satisfactorily performed the work of the class.”

The “work of the class” is a broad term including lectures, tests, tutorial attendance and tutorial assignments. Any other assignments or work prescribed by a lecturer in Legal Theory 1 will also fall under this definition.

PLEASE NOTE:

- You are required to attend all lectures. The Faculty of Law regards attendance at lectures as an inherent part of the course, similar to obtaining a pass mark in an exam.
- Your DP certificate will be at risk if you miss more than **SIX** lectures **regardless of whether you have L.O.A.s or not**, unless there are exceptional circumstances. You still need to apply for L.O.A.s at the Administrative office at the Law Faculty in the usual manner because this may assist you in establishing that exceptional circumstances exist.

The decision to grant or refuse a DP Certificate will be made by Mr Gordon Barker who makes the decision after consulting the course lecturers. Should a student be aggrieved by a decision, the proper procedure is to approach the Dean of the Faculty of Law.

Please note that **NO** warning letter will be sent advising you that your DP certificate will be taken away.

For further information regarding DP's please see the Law Faculty Survival Guide page 45.

12. ATTENDANCE REGISTER

IMPORTANT

In respect of **Foundations of Law and Introduction to Law**

If someone has signed on your behalf, you must bring it to the attention of your lecturer without delay. Signing on behalf of another or failure to report a signature which is not your own may result in disciplinary measures being taken against you.

The Law Faculty reserves the right to mark a student absent where the signature is obviously false and could result in your losing your DP Certificate. You should therefore take care to sign in a consistent fashion.

13. STAFF INVOLVED IN THE COURSE

Course Co-ordinator: Mrs E Davies
e.davies@ru.ac.za

Lecturers:

First Semester: Foundations of Law

Mrs E Davies
Professor N Goolam / Adv C Renaud

Second Semester: Introduction to the Study of Law

Mrs E Davies
Mrs L Niesing
Professor J Campbell

Tutorial Co-ordinator: Mrs E Davies

Academic development: Mrs E Davies

Graduate Assistants: Ms Lara Sittig g06s3657@campus.ru.ac.za
Ms Kathryn Abrahams g06a0023@campus.ru.ac.za

Please approach your lecturers if you have a problem with any aspect of the course.

Mrs Davies will assist with problems of an administrative nature e.g. leave of absence or change of tutorials. Queries relating to the content of the course should be referred to the relevant lecturer.

Professor Campbell has an office on the first floor of the Law Faculty Building, while Professor Goolam and Mrs Davies are on the top floor next to the staff

reading room and Ms Niesing's and Adv Renaud's offices are on the top floor next to the Attic.

14. LEGAL TERMS AND PHRASES

When reading legal material there are a number of words and phrases that are seldom encountered in everyday language and which may not be familiar. Many of these terms are in Latin and when used in your writing should be underlined if handwritten or typed in italics. What follows is a list of those terms which you will probably encounter more frequently than others during the course of this year. Please note that this is not an exhaustive list and should you come across a term not included below you should consult one of the dictionaries in the law library. A good reference for this purpose is:

RD Claassen *Dictionary of Legal Words and Phrases* (1997), Butterworths: Durban

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| <i>a quo</i> | from which (the judgment of the court <i>a quo</i> means a judgment of a court of the first instance i.e. the court before which the matter was heard before it was brought to the present court). |
| <i>ab initio</i> | from the beginning |
| absolution from the instance | - an order made by a court when on the evidence it is unable to give judgment for either party |
| <i>ad idem</i> | of the same mind |
| affidavit | a sworn statement made by a person in writing |
| appeal | where a superior court reconsiders a matter decided by a lower court |
| <i>bona fide</i> | in good faith |
| <i>causa</i> | cause |
| causal connection | the relationship between a specific act and a particular result |
| cause of action | the facts giving rise to a legal claim |
| <i>cadit quaestio</i> | the question falls away |
| <i>compos mentis</i> | sane |
| <i>contra bonos mores</i> | contrary to good morals |
| <i>consensus</i> | consent or agreement |
| <i>contumelia</i> | insult |
| <i>cur ad vult</i> | the court wishes to consider its decision |
| <i>de bonis propriis</i> | out of his/her own pocket |
| <i>de facto</i> | the factual position |
| <i>de minimis non curat lex</i> | the law is not concerned with trivialities |
| <i>de novo</i> | anew |
| <i>ex facie</i> | on the face of it |
| <i>ex lege</i> | by operation of law |
| <i>ex parte</i> | as the only interested party |
| <i>ex post facto</i> | seen in retrospect |
| <i>genus</i> | class |
| <i>in casu</i> | in this case |
| <i>in esse</i> | existing |
| <i>infra</i> | below |
| <i>in re</i> | in the case of |
| interdict | a court order which forbids someone to act in a certain way |

| | |
|--------------------------------|--|
| <i>in toto</i> | as a whole or in its entirety |
| <i>inter alia</i> | amongst others |
| interim | in the meantime |
| <i>intra vires</i> | within the authority |
| <i>iusta causa</i> | just cause |
| <i>litis contestatio</i> | the moment when the suit is instituted between the parties |
| <i>locus standi in iudicio</i> | capacity to litigate (i.e. the ability to sue or be sued in a court of law) |
| <i>mandamus</i> | (mandatory order) - court order compelling someone to do something |
| <i>mero motu</i> | spontaneously or of his/her own volition |
| <i>nexus</i> | link |
| <i>NO (nomine officii)</i> | in an official capacity |
| <i>obiter dictum</i> | remark in passing |
| <i>onus</i> | burden of proof |
| <i>pactum</i> | agreement |
| <i>per se</i> | in itself |
| <i>postea</i> | afterwards |
| <i>prima facie</i> | at first sight |
| <i>qua</i> | as |
| <i>quasi</i> | as if |
| <i>ratio</i> | ground or reason |
| <i>ratio decidendi</i> | reason for the decision |
| <i>res</i> | thing |
| <i>res ipsa loquitur</i> | it speaks for itself |
| <i>res judicata</i> | the matter has been judged and the case is therefore closed |
| respondent | the opposing party in an application or an appeal |
| <i>viva voce</i> | orally |
| <i>sine</i> | without |
| <i>status quo ante</i> | the previous legal position |
| <i>stare decisis</i> | decided cases remain authoritative |
| <i>sub judice</i> | pending |
| <i>sui generis</i> | of its own kind |
| <i>supra</i> | above |
| <i>ultra vires</i> | beyond the powers |
| voetstoots | a term in a contract of sale whereby a seller sells and a buyer purchases a thing "as it stands" with all its defects. |

15. REFERENCING

All students will be required to attend a comprehensive referencing tutorial which will be presented during March 2010. Further details will be given to you at the appropriate time.

Also, you must refer to the Faculty Survival Guide.