

Tutorial Letter 101/3/2018

Education Law

LCP4809

Semesters 1 and 2

**Department of Public, Constitutional &
International Law**

This tutorial letter contains important information
about your module.

BARCODE

CONTENTS

Page

| | | |
|-----------|--|-----------|
| 1 | INTRODUCTION | 3 |
| 2 | PURPOSE AND OUTCOMES | 3 |
| 2.1 | Purpose | 3 |
| 2.2 | Outcomes | 4 |
| 3 | LECTURER(S) AND CONTACT DETAILS..... | 4 |
| 3.1 | Lecturer(s) | 4 |
| 3.2 | Department..... | 4 |
| 3.3 | University | 5 |
| 4 | RESOURCES..... | 5 |
| 4.1 | Prescribed books | 5 |
| 4.2 | Recommended books | 5 |
| 4.3 | Electronic reserves (e-reserves) | 5 |
| 4.4 | Library services and resources information | 6 |
| 5 | STUDENT SUPPORT SERVICES..... | 8 |
| 6 | STUDY PLAN..... | 8 |
| 7 | PRACTICAL WORK AND WORK-INTEGRATED LEARNING..... | 8 |
| 8 | ASSESSMENT | 8 |
| 8.1 | Assessment criteria..... | 8 |
| 8.2 | Assessment plan | 9 |
| 8.3 | Assignment numbers | 9 |
| 8.3.1 | General assignment numbers | 9 |
| 8.3.2 | Unique assignment numbers | 9 |
| 8.4 | Assignment due dates..... | 10 |
| 8.5 | Submission of assignments | 10 |
| 8.6 | The assignments | 10 |
| 8.7 | Other assessment methods | 11 |
| 8.8 | The examination | 11 |
| 9 | PLAGIARISM AND REFERENCING | 11 |
| 10 | FREQUENTLY ASKED QUESTIONS | 14 |
| 11 | IN CLOSING..... | 14 |
| 12 | ADDENDUM A: FIRST SEMESTER COMPULSORY ASSIGNMENTS | 14 |
| 13 | ADDENDUM B: SECOND SEMESTER COMPULSORY ASSIGNMENTS..... | 22 |
| 14 | ADDENDUM C: SELF-EVALUATION ASSIGNMENT..... | 30 |

Dear Student

1 INTRODUCTION

We are pleased to welcome you to this module in Education Law and hope that you will find it interesting and rewarding. We shall do our best to make your studies in this module successful. You will be well on your way to success if you start to study early in the semester and resolve to do the assignments properly.

You will receive a number of tutorial letters during the semester. A tutorial letter is our way of communicating with you about teaching, learning and assessment. This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when you work through the study material, prepare the assignments, prepare for the examination and address questions to your lecturers.

In this tutorial letter (101), you will find the assignments and assessment criteria as well as instructions on the preparation and submission of the assignments. It also provides all the information that you need with regard to the prescribed study material and other resources, and how to obtain them. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully. Right from the start, we would like to point out that **you must read all the tutorial letters** you will receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information. Please note that some of the study material may not have been available when you registered. Study material that was not available when you registered will be posted to you as soon as possible, but is also available on *myUnisa*.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE AND OUTCOMES

2.1 Purpose

Education law is a rapidly developing and specialised field of law in which lawyers and legal practitioners have not had the opportunity to acquire specialist knowledge before. We trust that this module will provide you with a better understanding of the legal issues that constitute such an important and integral part of the work of every education leader and law practitioner involved in education.

Most students study this module when they have completed the basic modules of the LLB-degree, which means that many of you have a good knowledge of the public law and private law subjects that you have studied so far in your LLB programme. When we prepared the content and format of this module, we decided to concentrate on the public law branch of the law and its application in education. You might therefore need to refresh your memory on some of the basic concepts of constitutional law, administrative law and fundamental rights. This module therefore examines the legal (and policy) context of education management, school governance and human rights in the school environment. We chose only three topics for this module:

- (1) The constitutional and educational context in South Africa

- (2) Public school governance
- (3) Equality and diversity

We included an important research component in this module to enable you to delve deeper into your legal knowledge and to discover new insights and applications that are relevant and essential in your profession. The prescribed literature is therefore important and forms an integral part of the content of this module. Please ensure that you obtain the prescribed literature as soon as possible. We will guide you through the module by means of various forms and levels of activities to test not only your knowledge of the content, but also your insight into and understanding of its practical application. To master the content of the work and do proper research, you will have to apply your mind and work consistently and progressively through the module during the semester.

2.2 Outcomes

We would like you to keep the following objectives in mind when studying this module:

- You have to acquire a theoretical understanding of a number of legal and policy aspects of education management, school governance and the application of human rights in the school.
- You should consider what is done in practice critically and develop a legal awareness to improve your legal skills along with your theoretical knowledge.
- You should acquire the ability to do legal research in order to identify appropriate solutions to practical problems in the education environment.
- You have to develop your own potential so that you can continue to grow in your chosen profession.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

The lecturers responsible for this module are:

| | |
|--------------------------------|------------------------------|
| Lecturer's name: | Dr I Moodley |
| Building and office no: | Cas van Vuuren Building 7-40 |
| E-mail address: | Moodli@unisa.ac.za |
| Telephone number: | 012 429 8610 |

| | |
|--------------------------------|------------------------------|
| Lecturer's name: | Dr CA Hills |
| Building and office no: | Cas van Vuuren Building 7-24 |
| E-mail address: | Mienica@unisa.ac.za |
| Telephone number: | 012 429 8381 |

All queries that are not of a purely administrative nature, **but are about the content of this module**, should be directed to us. Please have your study material with you when you contact us. If nobody is available when you call (e.g. during meetings), please leave your name and a message on our answering machines so that we can respond to your call. Feel free to visit us to discuss any queries or problems. However, **please make an appointment beforehand**.

3.2 Department

You may contact the Department of Public, Constitutional and International Law directly on 012 429 8339. E-mail and telephone numbers for all lecturing staff are included above, but you might also want to write to us. Letters should be sent to:

The Module Leader (LCP4809)
 Department of Public, Constitutional & International Law
 P O Box 392
 Unisa
 0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

3.3 University

You can find general Unisa contact details in the *My Studies @ Unisa* brochure. Please use your student number when contacting the University.

4 RESOURCES

4.1 Prescribed books

There are no prescribed books for this module.

4.2 Recommended books

There are no recommended books for this module.

4.3 Electronic reserves (e-reserves)

The prescribed reading material (i.e. the e-reserves) may be retrieved from *myUnisa* (go to the homepage for the module LCP4809 and click on “Additional Resources”) or Unisa’s electronic library catalogue or may also be ordered directly from the Library (see section 4.4.1 below for information in this regard). The e-reserves for this module are:

| First Author | Year | Title | Journal/Publication | Volume | Pages |
|---------------|--------|--|--|---------|---------------|
| South Africa. | 0000 | Admission policy for ordinary public schools : General Notice 2432 of 1998. | Government Gazette of 19 October 1998, no. 19377. | | p. 1-7 |
| | (2002) | Antonie v Governing Body, Settlers High School | South African law reports. | Vol. 4 | p. 738-744. |
| | (2000) | Christian Education South Africa v Minister of Education. | Butterworths constitutional law reports. | Vol. 10 | p. 1051-1078. |
| South Africa. | 1996 | Constitution of the Republic of South Africa. | Government Gazette of 18 December 1996, no. 17678. South Africa. Government Printer, | | |
| | (2011) | Governing Body of the Juma Musjid Primary School and Others v Essay NNO and Others (Centre for Child Law and Socio-Economic Rights Institute of South Africa as Amicus Curiae) | Butterworths Constitutional Law Reports. | Vol. 8 | p. 761-810 |
| | 2010 | Head of Department, Mpumalanga Department of Education and Another | South African Law Reports. | Vol. 32 | p. 415-450 |

| | | | | | |
|---------------------------------------|--------|---|---|---------------------|----------------------|
| Bray, Elmene | (2007) | Macro issues of Mikro Primary School / Elmene Bray | Potchefstroom electronic journal (PER). | Vol. 1 | 20 p. |
| | (1996) | Matukane and others v Laerskool Potgietersrus | South African law reports. | Vol. 3 | p. 223-235. |
| | (2008) | MEC for Education, Kwazulu-Natal, others v Pillay | South African Law Reports. | Vol. 1 | p. 474-535 |
| South Africa | 1996 | National Education Policy Act 27 of 1996 | Government Gazette of 24 April 1996, no. 16778. South Africa. Government Printer, | | p. 1-11 |
| South Africa. Department of Education | (1999) | National Policy on HIV/AIDS, for learners and educators in public schools, and students as educators in further education and training institutions | Government gazette. General notices. | Vol. 410, no. 20372 | 64 p. |
| South Africa. | 1738. | Norms and standards for language policy in public schools : Government Notice R1738 of 1997. | Government Gazette of 19 December 1997, no. | | p. 1-5. |
| South Africa | 2000 | Promotion of administrative justice act 3 of 2000 | Government Gazette of 3 February 2000, no. 96. South Africa. Government Printer, | | p. 1-9 |
| | 2007. | Public schools admission policy : theory and practice / R. Joubert and Elmene Bray (eds.) | Public school governance in South Africa/ Edited by J. Joubert and Elmene Bray. | | p. 71-78 (Chapter 7) |
| | 2006 | Seodin Primary School and Others v MEC of Education, Northern Cape and Others. | All South African Law Reports, | | pages 154-188. |
| South Africa. | 1996 | South African schools act 84 of 1996. | Government Gazette of 15 November 1996, no. 17579. South Africa. Government Printer, | | |
| Bray, Elmene | (2002) | The constitutional concept of co-operative government and its application in education / Elmene Bray | Journal of contemporary Roman-Dutch law. | Vol. 65 | p. 514-531. |
| Malherbe, Rassie | 2004 | The constitutional framework for pursuing equal opportunities in education / Rassie Malherbe | Perspectives in education. | Vol. 22, no. 3 | p. 9-28. |
| Bray, Elmene | 2000. | The legal status of schools in the new South African education system /Elmene Bray | A critical chronicle of the South African Education Law and Policy Association. Edited by Johan Beckmann. SAELPA, | | p. 91-114. |
| Squelch, Jean. | 2000. | The right to administrative justice : the implications for school governing bodies / J. Squelch | A critical chronicle of the South African Education Law and Policy Association. Edited by Johan Beckmann. | | p. 359-372. |

4.4 Library services and resources information

For brief information, go to www.unisa.ac.za/brochures/studies

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

The library has compiled a number of library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding, obtaining and using library resources and tools to assist in doing research – http://libguides.unisa.ac.za/Research_Skills
- how to contact the library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>

4.4.1 *How to retrieve electronic documents from the Unisa library catalogue*

Note that these instructions pertain to those of you who have access to the internet.

Before you begin:

- a. Enable the latest version of the Adobe Acrobat Reader on your internet browser.

The documents are stored in portable document format (.pdf) to save space on the database. You can download the Adobe Acrobat Reader free of charge from the following website: Adobe Systems Incorporated
<http://www.adobe.com/products/acrobat/readstep.html>

- b. You will need a printer.
- c. Stock up on ink cartridges and paper before you start to print, especially if you have to print numerous documents.
- d. Save internet connection time by saving the retrieved document to your hard drive or to disk, and retrieve it at a later stage and print it offline.

Follow the instructions at the end of the notes below to save and retrieve documents.

- e. Remember that Internet Explorer is the preferred browser for access to the Unisa website.

Follow these steps to retrieve electronic documents from the Unisa Library Catalogue

- a. From the Unisa home page (www.unisa.ac.za), you can access the Library's home page by clicking on "Library".
- b. Once you have reached the Library's online screen, click on "Find e-reserves and recommended books" which appears under the section entitled "Search the library".
- c. Under "Search for material for my course", enter the course code LCP4809 and "Submit". You will then be directed to a page that lists all the e-reserves for LCP4809 per academic year.
- d. Click on "LCP4809 Electronic Reserves 2018". All the e-reserves for LCP4809 should now appear on your screen and you can access each individual one by merely clicking

on it. In order to access the reading material or resources placed on e-reserves, you will require an active *myUnisa* password.

5 STUDENT SUPPORT SERVICES

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes and language support) please consult the publication *My Studies @ Unisa* which you received with your study material.

Unisa has entered into partnerships with establishments (referred to as Telecentres) in various locations across South Africa to enable you (as a Unisa student) free access to computers and the Internet. This access enables you to conduct the following academic related activities: registration; online submission of assignments; engaging in e-tutoring activities and signature courses; etc. Please note, that any other activity outside of these, are for your own cost e.g. printing, photocopying, etc. For more information on the Telecentre nearest to you, please visit www.unisa.ac.za/telecentres.

6 STUDY PLAN

Use your *My Studies @ Unisa* brochure for general time management and planning skills.

7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

There are no practicals for this module.

8 ASSESSMENT

8.1 Assessment criteria

Assignment 01 is a multiple-choice assignment and will be assessed as follows:

- Each answer carries one mark.
- No mark will be awarded for an incorrect answer.
- No mark will be awarded for an unanswered question.
- The assignment is not marked negatively, that is, marks will not be deducted for incorrect answers.

The following criteria will be used to assess assignment 02 (the written assignment):

- The theoretical framework of education law is explained and integrated with regard to the existing legal position.
- Substantiated legal arguments, opinions and solutions are presented, based on research.
- Areas in need of legal development or reform are recognised.
- Language use is consistent with the conventions in the discipline of law.
- Source material is found to suit the needs of the particular area of research and the relevance and applicability of various legal sources and authorities are analysed and critically evaluated in terms of identified problems relating to education law.
- Students act responsibly and ethically as researchers and scholars, e.g. refer appropriately, acknowledge sources and avoid plagiarism.

8.2 Assessment plan

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning.

PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Assignments Section of the University and not to lecturers.

The compulsory assignments will count 20% towards your final mark for the module; 10% for the first assignment (Assignment 01) and 10% for the second assignment (Assignment 02).

Your final mark for the module will be a combination of your marks for the assignments and your examination mark. However, before your assignment marks will be taken into account in calculating your final mark, you have to obtain at least 40% in the examination. A student, who obtains 38% or 39% in the examination and has a combined assignment mark of 15, will therefore not pass the module because his or her mark is below the 40% subminimum, and his or her assignment marks will not be taken into account.

Both assignments count towards your final mark and must be submitted for evaluation. Students who submit the compulsory assignments in time (that is, before or on the closing dates for submission) will be admitted to the examination regardless of the marks they obtain for the assignment. In other words, a student who submitted the compulsory assignments, but obtained 0%, will be allowed to sit for the examination. Such a student will, however, not have a year mark. Students who do not submit the compulsory assignments before or on the closing dates **will not be admitted to write the examination**. Please start and complete your assignments well in time. Do not let unexpected illnesses or other personal traumas stand between you and admission to the examination.

8.3 Assignment numbers

8.3.1 General assignment numbers

You have to submit two compulsory assignments for this module:

- Assignment 01 is a multiple-choice assignment which consists of twenty (20) questions.
- Assignment 02 is a written assignment which consists of one (1) question only.

Assignment 03 (which appears on page 30 of this tutorial letter) is a self-evaluation assignment which consists of three (3) questions. Assignment 03 must not be submitted to the University for assessment, since it is a self-evaluation assignment which does not count towards your final mark for this module.

8.3.2 Unique assignment numbers

In addition to the general assignment number, each assignment has a unique number. These unique numbers are provided below. Please ensure that this unique number is clearly indicated on the assignments that you submit to the University.

8.4 Assignment due dates

The due dates for the submission of the assignments are as follows:

First semester:

Assignment 01: 2 March 2018 (**unique number: 749198**)
Assignment 02: 3 April 2018 (**unique number: 779946**)

Second semester:

Assignment 01: 3 August 2018 (**unique number: 771879**)
Assignment 02: 3 September 2018 (**unique number: 681315**)

8.5 Submission of assignments

Assignments may be submitted either by post **or** Mobile MCQ submission **or** electronically via *myUnisa*. Assignments may not be submitted by fax or e-mail. **IF YOU INTEND TO SUBMIT ASSIGNMENT 02 FOR THIS MODULE ELECTRONICALLY, PLEASE ENSURE THAT THE ASSIGNMENT IS SUBMITTED IN PDF FORMAT.**

For detailed information on assignments, please refer to the *My Studies @ Unisa* brochure, which you received with your study package.

To submit an assignment via *myUnisa*:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the menu on the left-hand side of the screen.
- Click on the assignment number you wish to submit.
- Follow the instructions.

When submitting assignments electronically, please ensure that you submit the correct assignment for the correct module. Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

8.6 The assignments

Assignments prescribed for the semester you have registered for are available at the end of this tutorial letter, namely:

Addendum A: First semester compulsory assignments.....pages 15-21
Addendum B: Second semester compulsory assignments.....pages 22-29
Addendum C: Self-evaluation assignment.....pages 30-34

You will receive the correct answers to multiple-choice questions automatically. For written assignments, markers will comment constructively on your work. However, feedback on

compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letter number will be 201, 202, etcetera.

As soon as you have received the feedback, please check your answers. The assignments and the feedback on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

The feedback on the self-assessment assignment is included in this tutorial letter. This will enable you to mark your assignment as soon as you have completed it.

8.7 Other assessment methods

There are no other assessment methods for this module.

8.8 The examination

8.8.1 *Examination period*

This module is offered in a semester period of 15 weeks. This means that if you are registered for the first semester, you will write the examination in May/June 2018 and the supplementary examination will be written in October/November 2018. If you are registered for the second semester, you will write the examination in October/November 2018 and the supplementary examination will be written in May/June 2019. During the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

8.8.2 *Examination paper*

At the end of each semester you will write **one two-hour paper** in Education Law (LCP4809). Further information about the format of the examination paper will be supplied in a later tutorial letter.

8.8.3 *Previous examination papers*

Previous examination papers are available to students on *myUnisa*. Please note however, that memorandums for previous examination papers **are not available** to students. You are encouraged not to rely too extensively on previous examination papers in your preparation as the format of the examination paper changes regularly.

9 PLAGIARISM AND REFERENCING

Plagiarism is a serious offence and is harshly dealt with in most circumstances. Briefly stated, plagiarism is committed when you take someone else's ideas, thoughts, words, insights or information and present them as your own. Therefore, in any research, if you use someone else's ideas and so forth and you fail to acknowledge that person's work, you are committing plagiarism. Not giving credit to someone is as bad as pretending that the relevant ideas are your own.

It does not matter where you find the information. Whether you find it on a website, in a court case, legislation, articles or your study guide – you must **ALWAYS** give a reference to the

relevant source. Failure to do so will be penalised and disciplinary action might be taken against you.

9.1. Forms of plagiarism

- The simplest form of plagiarism is where you literally cut and paste information from a source into your assignment. Usually this is taken from the internet, but you can also copy or write things word-for-word from a book or article. This is the easiest form of plagiarism to detect. If you want to use someone else's words directly, you need to quote them in the prescribed manner and indicate where you found the quote.
- Linked to the previous it is important to point out that too many quotes in your work is also a form of plagiarism. If more than about 15% of your work consists of quotes, you are not really indicating that you understood the material well enough to put it in your own words.
- Sometimes individuals try to hide the fact that they are copying word for word by changing a word here and there. This is still plagiarism and most plagiarism detecting software packages will pick it up.
- Another form of plagiarism is referencing a source used in someone else's work and pretending that you have read the original source. If you have not read the original source, your reference should be to the source you actually read. As a general rule, nothing should be in your footnotes that you have not personally read.
- Additionally, every source in your footnotes should be in your bibliography and every source in the bibliography should feature somewhere in your footnotes. It is dishonest to try to make the list of your sources more comprehensive than it really is.
- As a general rule, an essay, article, dissertation or thesis that contains NO footnotes is *prima facie* a case of plagiarism. By not adding any references, the author is claiming that he or she alone thought of EVERYTHING in that paper. This is highly unlikely! The original part of such an essay will in all likelihood be minimal. In legal research, we rely heavily on what the courts say (case law), what parliament decided (legislation), what the rules are/were in common law, what is done in other jurisdictions and so forth. ALL of these need to be properly referenced.
- Finally, handing in the same assignment or portfolio as another student will be regarded in a serious light. Even if students work together in a study group, they must hand in individual assignments or portfolios, showing that they have personally mastered the work.

As you can see, plagiarism is a very serious matter that impacts on the academic integrity of your work. It is as important in legal studies as it is in legal practice. In the next section, we provide a short version of the prescribed referencing style used by the College of Law.

9.2 Prescribed style of referencing

As we have said in the previous section, referencing is extremely important in order for work to have academic integrity. In the College of Law there is a prescribed manner for referencing sources. This format MUST be used for Assignment 02. This section is a summary of that prescribed reference style.

Note that there are two ways in which you can reference. The first option is to use the shortened version of a source throughout in your footnotes. In this case, you MUST attach a

bibliography containing both the shortened and the full reference. The second option is to give the full reference the first time you refer to that source and thereafter the shortened version. The advantage of this option is that you need not add a bibliography, but the disadvantage is that you need to update your references if you change your footnotes.

The rule of thumb is that you must provide all the information necessary so that whoever needs to find that source, will be able to do so. Below is a summary of how you should refer to the various sources. We give both the long and the short versions – from this it should be clear why the short version is insufficient and that a bibliography should be added. The bibliography is always in the full version.

Examples:

| SOURCE | FULL REFERENCE | SHORT VERSION |
|-----------------|--|---|
| Books | Rowlands M <i>The philosopher at the end of the universe: Philosophy explained through science-fiction films</i> | Rowlands <i>The philosopher at the end of the universe</i> 33 |
| Chapter in book | Cover R “Violence and the word” in Minow M, Ryan M and Sarat A (eds) <i>Narrative, violence and the law: The essays of Robert Cover</i> (1992) University of Michigan Press, Ann Arbor 203-238 | Cover “Violence and the word” 204 |
| Articles | Schlag P “Law as the continuation of God by other means” (1997) <i>California Law Review</i> 427-440 | Schlag 1997 <i>California LR</i> 434 |
| Legislation | National Health Act 61 of 2003 | None. Please see bullet 2 below. |
| Constitution | Constitution of the Republic of South Africa, 1996 | None. Same applies as to legislation |
| Case law | <i>Hoffmann v South African Airways</i> 2001 (1) SA 1 (CC) | None. See bullet 3 below. |
| Internet | Mamoepa B “The Act on Higher Education” http://www.star.hsrc.ac.za/nche.html (Date of use: 16 November 1997) | Mamoepa http://www.star.hsrc.ac.za/nche.html (Date of use: 16 November 1997) |

Please note:

- Your study guide is regarded as a book and should be referenced as such: Moodley I & Mienie CA *Only study guide for education law (LCP4809)* (2012) Unisa Press, Pretoria. Shortened version: Moodley & Mienie *Education law* 43.
- There is no standard shortened form for legislation. If you need to refer to legislation more than once, quote the full reference the first time and add “hereinafter referred to as the Act/the Schools Act” between brackets.

- As with legislation, there is no standard shortened form for case law. You should use the full reference the first time and then add “hereinafter referred to as the *Pillay* case” between brackets.
- If there is no prescribed style of reference for your source, you can choose how you will refer to it, but then use that style consistently throughout.

10 FREQUENTLY ASKED QUESTIONS

Please refer to the *MyStudies @ Unisa* brochure which contains an A-Z guide of the most relevant study information.

11 IN CLOSING

Please contact us if you experience any problems with the module. We wish you success in your studies and trust that you find this course stimulating and useful.

Your lecturers
DR I MOODLEY
DR CA HILLS

12 ADDENDUM A: FIRST SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01

DUE DATE: 2 MARCH 2018

THE UNIQUE NUMBER FOR ASSIGNMENT 01 IS: 749198

Assignment 01 will count 10% towards your final mark. If you do not submit this assignment, you will NOT be admitted to the examination.

Instructions:

1. Your answers must be completed on a Unisa mark-reading sheet.
2. The unique number must appear on the Unisa mark-reading sheet.
3. Only one of the statements is correct. You must therefore mark only one of the squares for each question. If you mark more than one square for a specific question, you will receive no mark for that answer.
4. Also bear in mind that some of the statements in a given question might be partially correct. However, you must select the one which is most accurate.

Question 1

Fill in the missing word or words: ONE of the characteristics of the law is that it must be obeyed by all members of ... including the state, and, when it is disobeyed, the state should restore the (legal) balance.

- (1) staff
- (2) society
- (3) the governing body
- (4) the organised teaching profession

Question 2

Who is responsible for determining the norms and standards for language policy in public schools?

- (1) Minister of Basic Education
- (2) Head of Department
- (3) Member of the Executive Council (MEC)
- (4) The school governing body

Question 3

Indicate which statement is NOT correct: According to the South African Schools Act 84 of 1996...

- (1) a public school may be— (i) an ordinary public school; (ii) a public school for learners with special education needs; or (iii) a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts.
- (2) the Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

- (3) subject to section 20(1)(k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.
- (4) the Council of Education Ministers must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.

Question 4

In *The Western Cape Minister of Education v The Governing Body of Mikro Primary School* 2005 (10) BCLR 973 (SCA), the Court concluded that ...

- (1) the public school is an organ of state and, in relation to its functions of determining its language and admission policy, is subject to national and provincial executive control.
- (2) the right to receive education in the official language of choice where it is reasonably practicable means that the right extends to each and every public educational institution.
- (3) the school's language policy and admission policy were not contrary to any provision of the Constitution of the Republic of South Africa, 1996, the South African Schools Act 84 of 1996, the Western Cape Provincial School Education Act 12 of 1997 or the Norms and Standards for Language Policy in Public Schools.
- (4) the Member of the Executive Council (MEC) may withdraw on reasonable grounds a function which the governing body has failed or ceased to perform. This power of withdrawal extends to functions allocated in both section 16 and 16A of the South African Schools Act 84 of 1996.

Question 5

Fill in the missing word or words: According to section 41(3) of the Constitution of the Republic of South Africa, 1996 ... involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.

- (1) a natural person
- (2) an agent of the state
- (3) a juristic person
- (4) an organ of state

Question 6

National education policy shall be directed toward ...

- (1) achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women.
- (2) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 5 of the Constitution, and in terms of international conventions ratified by Parliament.
- (3) achieving a divided approach to education and training within a national qualifications framework.
- (4) promoting a culture of disrespect for teaching and learning in education institutions; and encouraging dependent and uncritical thought.

Question 7

According to Squelch J “The right to administrative justice: the implications for school governing bodies” (2000) *A critical chronicle of the South African Education Law and Policy Association* (Edited by Johan Beckmann SAELPA) ...

- (1) an organ that has a personal interest in a matter in which it must exercise a discretion is regarded as impartial.
- (2) where an administrative body makes a decision that affects the rights of the person concerned, it is required to provide the person concerned with written reasons for its decision. Reasons must be unfair, unjust and based on irrelevant information. Reasons that are clear, appropriate and substantial are likely to be challenged and set aside.
- (3) at common law, the *nemo iudex in sua causa* rule requires that all relevant information be communicated to the person who may be affected by an administrative decision.
- (4) due process includes both procedural due process, which refers to fair procedures that are used, and substantive due process, which refers to the appropriateness and fairness of rules.

Question 8

According to the South African Schools Act 84 of 1996 ...

- (1) any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the school governing body.
- (2) the curriculum and the process for the assessment of learner achievement must be applicable to public schools only.
- (3) a representative council of learners at the school must be established at every public school enrolling learners in the eighth grade or higher, and such council is the only recognised and legitimate representative learner body at the school.
- (4) a learner may be subjected to disciplinary proceedings if– (a) a dangerous object or illegal drug is found in his or her possession; or (b) his or her sample tested negative for an illegal drug.

Question 9

Fill in the missing words: According to the Admission Policy for Ordinary Public Schools Notice 2432 of 1998, a parent must complete an application form for admission, which should be made available to him or her by the principal of the school together with the admission policy and the ... for learners of the school.

- (1) school fees
- (2) mission statement
- (3) code of conduct
- (4) language policy

Question 10

In *Antonie v Governing Body, Settlers High School and Others* 2002 (4) SA 738 (C) ...

- (1) the applicant decided to embrace the principles of the Hindu/Tamil religion.
- (2) the applicant's suspension was set aside.

- (3) the Court noted that the school's code of conduct made specific mention to dreadlocks under the heading of 'hair'.
- (4) the Court referred to the Guidelines for a Code of Conduct for Learners Notice 776 of 1998, and stated that according to paragraph 4.5.1, "freedom of expression" has a restricted meaning and is limited to freedom of speech alone.

Question 11

Who is responsible for establishing a school fund and administering it in accordance with directions issued by the Head of Department?

- (1) The parents of learners at a public school
- (2) The school governing body
- (3) The educators at a public school
- (4) The school principal

Question 12

ONE of the premises on which the National Policy on HIV/AIDS, for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions is based is:

- (1) Intravenous drug abuse is not a source of HIV transmission among learners and students.
- (2) Testing for HIV/AIDS for employment or attendance at schools is permitted.
- (3) Compulsory disclosure of a learner's, student's or educator's HIV/AIDS status to school or institution authorities is always advocated.
- (4) Because of the increasing prevalence of HIV/AIDS in schools, it is imperative that each school must have a planned strategy to cope with the epidemic.

Question 13

Fill in the missing word: According to Bray E "The constitutional concept of co-operative government and its application in education" (2002) *Journal for Contemporary Roman-Dutch Law* ... is vitally important for meaningful human existence: it enables individuals to develop whole and mature personalities, and empowers them to fulfil roles that are self-enriching and beneficial to society.

- (1) money
- (2) education
- (3) food
- (4) oxygen

Question 14

In which ONE of the following cases was the following argument presented to the Court by a school defending itself for refusing to admit black learners? "The Afrikaner people constitute a minority. By virtue, for instance, of the United Nations' Charter on Human and Peoples' Rights (articles 20 and 22) the Afrikaner people, as a minority have an unquestionable and inalienable right to self-determination."

- (1) *Seodin Primary School and Others v MEC, Northern Cape and Others* 2006 (4) BCLR 542 (NC)
- (2) *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC)
- (3) *The Western Cape Minister of Education v The Governing Body of Mikro Primary School* 2005 (10) BCLR 973 (SCA)
- (4) *Matukane and Others v Laerskool Potgietersrus* 1996 (3) SA 223 (T)

Question 15

Indicate which statement is **NOT** correct: The Language in Education Policy in terms of section 3(4)(m) of the National Education Policy Act 27 of 1996 ...

- (1) aims to pursue the language policy most supportive of general conceptual growth amongst learners, and hence to establish additive multilingualism as an approach to language in education.
- (2) aims to support the teaching and learning of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade and communication, and South African Sign Language, as well as Alternative and Augmentative Communication.
- (3) provides that the language(s) of learning and teaching in a public school does not necessarily have to be (an) official language.
- (4) provides that all language subjects shall receive equitable time and resource allocation.

Question 16

The governing body of a public school ...

- (1) may have any of their functions withdrawn by the Head of Department (HoD), on reasonable grounds, and provided the correct procedures have been followed.
- (2) comprises representatives of all stakeholders (i.e. parents, educators, staff and learners) and although the number of governors will vary, educators must comprise the majority vote.
- (3) elects its own office bearers (chair, treasurer and secretary) and the chairperson must be a parent employed at the school.
- (4) may never establish committees to assist them in their work and may never co-opt persons who are not on the governing body.

Question 17

Indicate which statement is **NOT** correct. In *MEC for Education, KwaZulu-Natal, and Others v Pillay* 2008 (1) SA 474 (CC) the Court held that ...

- (1) the evidence showed that the nose stud was a mandatory tenet of Sunali's religion or culture and an involuntary expression of South Indian/Tamil/Hindu culture, a culture that was intimately intertwined with Hindu religion, and that Sunali regarded it as such.
- (2) under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (i.e. the Equality Act), failure to take steps to reasonably accommodate the needs of people on the basis of race, gender or disability amounted to discrimination.

- (3) it would be perfectly correct for a school, through its code of conduct to set strict procedural requirements for exemption. It would also be appropriate for the parents and, depending on their age, the learners, to be required to explain in writing beforehand why they require an exemption.
- (4) the discrimination had a serious impact on Sunali and, although the evidence showed that uniforms serve an important purpose, it does not show that the purpose is significantly furthered by refusing Sunali her exemption. Allowing the nose stud would not have imposed an undue burden on the school.

Question 18

Fill in the missing words: According to Joubert R & Bray E “Public school admission policy: theory and practice” (2007) *Public school governance in South Africa* ... zones are instituted to control learner numbers at school and to co-ordinate parental preferences.

- (1) school detention
- (2) school feeder
- (3) primary
- (4) secondary

Question 19

In which ONE of the following cases did the Director General of the Department of Education aver (on behalf of the Minister of Education) that “corporal punishment is inherently violent, and involves a degrading assault upon the physical, emotional and psychological integrity of the person to whom it is administered? South Africans have suffered, and continue to suffer, a surfeit of violence. The state has an obligation to ensure that the learner’s constitutional rights are protected. It has an interest in ensuring that education in all schools is conducted in accordance with the spirit, content and values of the Constitution”.

- (1) *S v Williams and Others* 1995 (7) BCLR 861 (CC)
- (2) *S v A Juvenile* 1990 (4) SA 151 (ZS)
- (3) *Ex Parte Attorney-General, Namibia: In re Corporal Punishment by Organs of State* 1991 (3) SA 76 (NmS)
- (4) *Christian Education South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC)

Question 20

Fill in the missing section number: Section ... of the Constitution of the Republic of South Africa, 1996 provides that everyone has the right to further education, which the state, through reasonable measures, must make progressively available and accessible.

- (1) 29(1)(a)
- (2) 29(2)(a)
- (3) 29(1)(b)
- (4) 29(3)(b)

ASSIGNMENT 02**DUE DATE: 3 April 2018****THE UNIQUE NUMBER FOR ASSIGNMENT 02 IS: 779946**

Assignment 02 will count 10% towards your final mark. You will receive individual comments on your work and a mark for the assignment. Your essay will be marked out of a total of 50 marks and your mark will then be calculated as a percentage (for example, 25 out of 50 = 50%).

Question:

Write an essay of about 1500 words (approximately four (4) typed pages in 1,5 line spacing) in which you critically analyse Bray's statement below in the context of education management in South Africa:

"Developing strong and effective spheres of government and ensuring that each one fulfils its constitutionally assigned role in a system of cooperative governance may be one of the greatest challenges facing government in South Africa" (2002:530).

Instructions:

- (1) The compulsory assignment is in the form of an essay. Although we prefer typed assignments, we also accept neatly handwritten work.
- (2) The length of your assignment should not exceed 1500 words in total (approximately four (4) typed pages in 1,5 line spacing). Should your assignment exceed the restriction placed on the number of words/pages you **will be** penalised (marks will be deducted from your assignment).
- (3) Your essay must be properly referenced. The practice of merely inserting a bibliography at the end of the essay will not suffice. If you are submitting a typed assignment, then referencing should be done in footnotes. If you are submitting a handwritten assignment, then we will accept the Harvard style (in text) method of referencing. Should you choose to ignore the instructions on referencing you **will be** severely penalised (marks will be deducted from your assignment), as a failure to reference properly constitutes plagiarism which is an offence in terms of the rules of the University.
- (4) Please note that only proper attempts at answering the assignment question will be accepted.
- (5) **IF YOU WILL BE SUBMITTING ASSIGNMENT 02 FOR THIS MODULE ELECTRONICALLY, PLEASE ENSURE THAT THE ASSIGNMENT IS SUBMITTED IN PDF FORMAT.**
- (6) You will have to do research for this assignment. Please note that we will only accept articles authored in accredited law journals, South African books and relevant case law as permissible references in the assignment. Internet sources like Wikipedia, Google etcetera will not be acceptable, as they are **NOT** legal resources.

13 ADDENDUM B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01

DUE DATE: 3 AUGUST 2018

THE UNIQUE NUMBER FOR ASSIGNMENT 01 IS: 771879

Assignment 01 will count 10% towards your final mark. If you do not submit the assignment, you will NOT be admitted to the examination.

Instructions:

1. Your answers must be completed on a Unisa mark-reading sheet.
2. The unique number must appear on the Unisa mark-reading sheet.
3. Only one of the statements is correct. You must therefore mark only one of the squares for each question. If you mark more than one square for a specific question, you will receive no mark for that answer.
4. Also bear in mind that some of the statements in a given question might be partially correct. However, you must select the one which is most accurate.

Question 1

Who is responsible for prescribing minimum uniform norms and standards for– (a) school infrastructure; (b) capacity of a school in respect of the number of learners a school can admit; and (c) the provision of learning and teaching support material?

- (1) The school governing body
- (2) Member of the Executive Council (MEC)
- (3) Head of Department
- (4) Minister of Basic Education

Question 2

According to the South African Schools Act 84 of 1996 ...

- (1) the Member of the Executive Council (MEC) must provide public schools for the education of learners out of funds appropriated for this purpose by the national legislature.
- (2) the professional management of a public school must be undertaken by the educators under the authority of the Head of Department.
- (3) a public school may charge a parent of a learner at that school different school fees based on the curriculum or extramural curriculum within the same grade.
- (4) the Head of Department may suspend or terminate the membership of a governing body member for a breach of the code of conduct after due process.

Question 3

Fill in the missing word: Malherbe states (in his article “The constitutional framework for pursuing equal opportunities in education” (2004) *Perspectives in Education* vol. 22(3)) that in the South African context ... education could refer to a standard of education that empowers people to rise above the poverty cycle and compete effectively in the labour market, enables people to understand and enjoy their new-found democratic values, rights and freedoms, encourages people to participate in and protect the fledgling democratic system, and enhances their feeling of self-worth as human beings.

- (1) quality
- (2) basic
- (3) adequate
- (4) further

Question 4

Indicate which statement is **NOT** correct. In *MEC for Education, KwaZulu-Natal, and Others v Pillay 2008 (1) SA 474 (CC)* the Court held ...

- (1) that Sunali was part of the North Indian, Gujarati and Hindu groups which are defined by a combination of religion, language, geographical origin, ethnicity and artistic tradition.
- (2) that the school's code of conduct, coupled with the decision to refuse Sunali an exemption from the code, was discriminatory on the grounds of both religion and culture in terms of section 6 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (i.e. the Equality Act).
- (3) (as to the effect on the school), that there was no evidence and no reason to believe that a learner who was granted an exemption from the provisions of the school's code of conduct would be any less disciplined, or that she would negatively affect the discipline of others. Refusing Sunali an exemption therefore, did not achieve the intended purpose.
- (4) that whether a religious or cultural practice was voluntary or mandatory is irrelevant to whether it qualified for protection under the Equality Act.

Question 5

According to section 1 of the Constitution of the Republic of South Africa, 1996 **ONE** of the values on which South Africa, as one sovereign, democratic state is founded on is ...

- (1) human dignity, the achievement of inequality and the advancement of animal rights and freedoms.
- (2) apartheid and sexism.
- (3) supremacy of the Constitution and the rule of law.
- (4) universal adult suffrage, a Blacks only voters roll, regular elections and a single-party system of democratic government, to ensure accountability, responsiveness and secrecy.

Question 6

According to the Admission Policy for Ordinary Public Schools Notice 2432 of 1998, the governing body of a school must inform all parents of learners admitted to a school of their rights and obligations in terms of the South African Schools Act, 1996, and any applicable provincial law. Parents must specifically be informed about their rights and obligations in respect of the governance and affairs of the school, including the process of deciding the school budget, any decision of a parent meeting relating to school fees, and the ...

- (1) mission statement of the school.
- (2) code of conduct for learners.
- (3) language policy of the school.
- (4) safety policy for learners.

Question 7

According to Bray E “The constitutional concept of co-operative government and its application in education” (2002) *Journal for Contemporary Roman-Dutch Law* ...

- (1) the local sphere of government is not directly vested with any education functions, although nothing prevents the national or provincial sphere to assign such functions to local government.
- (2) section 40 of the Constitution of the Republic of South Africa, 1996 provides that government in the Republic is constituted as national and provincial spheres of government which are distinctive, interdependent and interrelated.
- (3) in *National Education Policy Bill No 83 of 1995* 1996 (4) BCLR 518 (CC), the Constitutional Court stated that: “where two legislatures have concurrent powers to make laws in respect of the same functional area, the only reasonable way in which these powers can be implemented is through discord.
- (4) education authorities must promote and maintain a high standard of professional ethics in the administration of public education, promote efficient economic and effective use of education resources, respond to people’s needs and discourage their participation in education policy making, be development-oriented and seek to maintain the imbalances of the past.

Question 8

Fill in the missing case name: In *Governing Body of Mikro Primary School v Western Cape Minister of Education* 2005 (2) All SA 37 (C), the Court, relying on ... argued that the school was not an organ of state because the legislature intended it to be independent of state or government control in the performance of its functions.

- (1) *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC)
- (2) *Directory Advertising Cost Cutters v Minister for Posts, Telecommunications and Broadcasting* 1996 (3) SA 800 (T)
- (3) *Harksen v Lane* 1997 (11) BCLR 1489 (CC)
- (4) *Larbi-Odam v MEC for Education (North-West Province)* 1996 (12) BCLR 1612 (BSC)

Question 9

Who may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as he/she/they may determine which may include the charging of a fee or tariff which accrues to the school?

- (1) The school principal
- (2) The educators at a public school
- (3) The governing body
- (4) The parents of learners at a public school

Question 10

Fill in the missing word: According to section 33 of the Constitution of the Republic of South Africa, “(1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair. (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. (3) National legislation must be enacted to give effect to these rights, and must–

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
- (b) impose a duty on the ... to give effect to the rights in subsections (1) and (2); and
- (c) promote an efficient administration.”

- (1) education departments
- (2) courts
- (3) public school
- (4) state

Question 11

Independent schools ...

- (1) may be converted into public schools if such an agreement is entered into between the owner of an independent school and the Member of the Executive Council (MEC); and notice of the changed status must be published in a national newspaper.
- (2) function as a category of school within the legal framework of the South African education system and are compelled to adhere to public law provisions (legislation) which regulate overall (national) education norms and standards.
- (3) may only be established and maintained by persons with a PhD degree and at his or her own cost.
- (4) must be registered by the Head of Department (HoD) if he or she is satisfied that the standards to be maintained by such school will be inferior to the standards in comparable public schools; (b) the admission policy of the school discriminates on the grounds of race; and (c) the school complies with the grounds for registration.

Question 12

In which ONE of the following cases was PANSALB (the Pan South African Language Board) allowed to intervene as *amicus curiae* after the hearing had already been concluded?

- (1) *Matukane and Others v Laerskool Potgietersrus* 1996 (3) SA 223 (T)
- (2) *The Western Cape Minister of Education v The Governing Body of Mikro Primary School* 2005 (10) BCLR 973 (SCA)
- (3) *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC)
- (4) *Seodin Primary School and Others v MEC, Northern Cape and Others* 2006 (4) BCLR 542 (NC)

Question 13

Indicate which statement is NOT correct: According to the South African Schools Act 84 of 1996 ...

- (1) subject to the Act and any other applicable law– (a) any parent who, without just cause and after a written notice from the Head of Department, fails to cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in

which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

- (2) if the police cannot collect the dangerous object or illegal drug (that was seized during a random search and seizure at a school) from the school immediately, the learner must— (a) take the dangerous object or illegal drug to the nearest police station; and (b) hand the dangerous object or illegal drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- (3) subject to the Constitution and this Act, the Minister may, by notice in the *Government Gazette*, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools. The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law. No form of racial discrimination may be practised in implementing policy determined under this section. A recognised Sign Language has the status of an official language for purposes of learning at a public school.
- (4) a governing body may, if a learner is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8— (a) impose the suspension of such learner for a period not longer than seven school days or any other sanction contemplated in the code of conduct of the public school; or (b) make a recommendation to the Head of Department to expel such learner from the public school.

Question 14

ONE of the measures utilised for the prevention of HIV transmission during play and sport in terms of the National Policy on HIV/AIDS, for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions is that ...

- (1) learners, students or educators may participate in contact play or contact sport with an open wound, sore, break in the skin, graze or open skin lesion.
- (2) if bleeding occurs during contact play or contact sport, the injured player should remain on the playground or sports field.
- (3) adequate wound management in the form of the application of universal precautions, is essential to contain the risk of HIV transmission during contact play and contact sport.
- (4) an ill-equipped first-aid kit should be available wherever contact play or contact sport takes place.

Question 15

Fill in the missing word or words: ... are the main policymakers, but other entities functioning in the public and private domain also make policy.

- (1) Educators
- (2) Governments
- (3) Governing Bodies
- (4) The organised teaching profession

Question 16

In *Governing Body of the Juma Musjid Primary School and Others v Essay NNO and Others (Centre for Child Law and Socio-Economic Rights Institute of South Africa as Amici Curiae)* [2011] ZACC 13; 2011 (8) BCLR 761 (CC), the Court held that ...

- (1) the Court *a quo* gave precedence to the right to property (of the Trust) over the learners' right to a basic education, and as a result, the Court had "failed to accord sufficient weight to the entrenched rights of the learners and to the paramount importance of their best interests".
- (2) the Trust, as the owner of the property, had acted unreasonably in seeking an order for eviction because its attempts to engage the MEC to alleviate the position of learners affected by the proposed eviction were successful.
- (3) the right to basic education is "immediately realisable" as it contains an internal limitation requiring that the right be "progressively realised" within "available resources" subject to "reasonable legislative measures".
- (4) (on the basis of section 8 of the Constitution of the Republic of South Africa, 1996) there was a primary positive obligation on the Trust to provide basic education to the learners.

Question 17

The National Education Policy Act 27 of 1996 provides that ...

- (1) the Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.
- (2) the functions of the Heads of Education Departments Committee shall be to– (a) promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section 146 of the Constitution; (b) share information and views on all aspects of education in the Republic; and (c) co-ordinate action on matters of mutual interest to the national and provincial governments.
- (3) the Minister has no discretion to consult with whomever he or she wishes for advice on the determination of national education policy.
- (4) the functions of the Council of Education Ministers shall be to– (a) facilitate the development of a national education system in accordance with the objectives and principles provided for in this Act; (b) share information and views on national education; (c) co-ordinate administrative action on matters of mutual interest to the education departments; and (d) advise the Department on any matter contemplated in sections 3, 4, 5, 6, 7, 8 and 11 in respect of education, or on any other matter relating to the proper functioning of the national education system.

Question 18

Indicate which statement is NOT correct. The Norms and Standards regarding Language Policy published in terms of section 6(1) of the South African Schools Act 84 of 1996 ...

- (1) aims to promote, fulfil and develop the state's overarching language goals in school education in compliance with the Constitution, namely: (1) the protection, promotion, fulfilment and extension of the individual's language rights and means of communication in education; and (2) the facilitation of national and international communication through promotion of bi- or multilingualism through cost-efficient and effective mechanisms, (3) to redress the neglect of the historically disadvantaged languages in school education.
- (2) provides that the parent must choose the language of teaching upon application for admission to a particular school.
- (3) provides that the provincial education department must keep a register of requests by learners for teaching in a language medium which cannot be accommodated by schools.

- (4) provides that subject to any law dealing with language in education and the constitutional rights of learners, in determining the language policy of the school, the governing body must stipulate how the school will promote multilingualism through using more than one language of learning and teaching, and/or by offering additional languages as fully-fledged subjects, and/or applying special immersion or language maintenance programmes, or through other means approved by the head of the provincial education department.

Question 19

Fill in the missing word: In *Antonie v Governing Body, Settlers High School and Others* 2002 (4) SA 738 (C), the applicant embraced the principles of the ... religion.

- (1) Rastafarian
- (2) Hindu/Tamil
- (3) Islamic
- (4) Jewish

Question 20

In which ONE of the following cases was the issue of whether corporal punishment in schools is in itself degrading touched upon but not decided by the Court? In the case; holding that judicially ordered corporal punishment of juveniles was in conflict with the Bill of Rights, Langa J stated that “the issue of corporal punishment in schools was by no means free of controversy” and that “the practice had inevitably come in for strong criticism”. In his view, the “culture of authority which legitimated the use of violence was inconsistent with the values for which the Constitution stands”.

- (1) *Christian Education South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC)
- (2) *Ex Parte Attorney-General, Namibia: In re Corporal Punishment by Organs of State* 1991 (3) SA 76 (NmS)
- (3) *S v A Juvenile* 1990 (4) SA 151 (ZS)
- (4) *S v Williams and Others* 1995 (7) BCLR 861 (CC)

ASSIGNMENT 02

DUE DATE: 3 September 2018

THE UNIQUE NUMBER FOR ASSIGNMENT 02 IS: 681315

Assignment 02 will count 10% towards your final mark. You will receive individual comments on your work and a mark for the assignment. Your essay will be marked out of a total of 50 marks and your mark will then be calculated as a percentage (for example, 25 out of 50 = 50%).

Question:

Write an essay of approximately 1500 words in which you discuss the role of the public school in the South African education system. Pay particular attention to the critical function of the governing body in providing quality education to all the learners in the school.

Instructions:

- (1) The compulsory assignment is in the form of an essay. Although we prefer typed assignments, we also accept neatly handwritten work.
- (2) The length of your assignment should not exceed 1500 words in total (approximately four (4) typed pages in 1,5 line spacing). Should your assignment exceed the restriction placed on the number of words/pages you **will be** penalised (marks will be deducted from your assignment).
- (3) Your essay must be properly referenced. The practice of merely inserting a bibliography at the end of the essay will not suffice. If you are submitting a typed assignment, then referencing should be done in footnotes. If you are submitting a handwritten assignment, then we will accept the Harvard style (in text) method of referencing. Should you choose to ignore the instructions on referencing you **will be** severely penalised (marks will be deducted from your assignment), as a failure to reference properly constitutes plagiarism which is an offence in terms of the rules of the University.
- (4) Please note that only proper attempts at answering the assignment question will be accepted.
- (5) **IF YOU WILL BE SUBMITTING ASSIGNMENT 02 FOR THIS MODULE ELECTRONICALLY, PLEASE ENSURE THAT THE ASSIGNMENT IS SUBMITTED IN PDF FORMAT.**
- (6) You will have to do research for this assignment. Please note that we will only accept articles authored in accredited law journals, South African books and relevant case law as permissible references in the assignment. Internet sources like Wikipedia, Google etcetera will not be acceptable as they are **NOT** legal resources.

14 ADDENDUM C: SELF-EVALUATION ASSIGNMENT

ASSIGNMENT 03

Please note: This assignment must not be submitted to the University since it is a self-assessment assignment which does not count towards your final mark for this module.

Question 1

- (a) Briefly explain the importance of the Constitution for education management in South Africa, with particular reference to co-operative governance. (13)
 - (b) What is the legal position of the public school and its relationship with its governing body? (10)
- [23]**

Question 2

Discuss the role of the principal in conducting searches and seizures at school. (10)

[10]

Question 3

A Grade 10 learner is expelled from school by the school governing body for pedaling illegal drugs at school. As an education law expert, advise the Grade 10 learner and her parents on the following matters:

- (a) the legality of the expulsion; (5)
 - (b) the basic elements of procedural fairness (found in common law and statute and protected by the 1996 Constitution) which the administrator has to comply with when applying due process in practice. (12)
- [17]**
{50}

FEEDBACK ON ASSIGNMENT 03

You should mark your answers yourself for the self-assessment assignment. Do this by comparing your answer to the answers which are supplied below. Make adjustments where necessary. Please contact us immediately if you experience any problems.

Question 1

- (a) The Constitution is a negotiated document adopted by the people of South Africa. It is the supreme law of the country: all law and conduct must be consistent with it which means, for example, that education legislation inconsistent with it may be invalidated or declared unconstitutional by the courts; obligations in terms of the Constitution must be fulfilled especially by the education authorities and educators representing public education in South Africa (section 2).

The Constitution determines the structures of education: it provides for the division (which is actually the “sharing”) of education between the national and provincial spheres of government in terms of “concurrent” legislative powers (section 104 read with Schedule 4) and it determines the character of the spheres of government and how they

work together in the cooperative relationship (Chapter 3). Governance of school education is a concurrent matter within this cooperative intergovernmental relationship.

Education is a public service (see section 195) and should be administered in terms of the democratic values and principles of the Constitution. Education legislation and policy and the administration of education must, therefore, give effect to the Constitution (e.g. the structures and system have to further define and refine the structural, organisational and functional aspects of education).

Therefore, education management and governance is subject to the Constitution and all management and governance activities (of government and school governance) must adhere to the basic norms and standards of the Constitution, such as, its democratic values and norms, a human rights culture, and co-operative, participative and accountable governance.

- (b) A public school is an “organ of state” in the sense that it is a functionary/institution exercising public power or performing a public function in terms of any legislation (section 239(b)(ii)). Bear in mind that a public school is not an organ of state in the sense of being a sphere of government, or an organ operating within a sphere of government, but, for purposes of rendering a public education service, it forms part of the broader public administration and is, therefore, subject to the Constitution in this regard. (See *The Western Cape Minister of Education v The Governing Body of Mikro Primary School* [2005] ZASCA 66; [2005] 3 All SA 436 (SCA).)

The Constitution prescribes how public education services should be delivered by the relevant spheres of government (national and provincial - in terms of school education) but, more importantly, *how* public schools and their governing bodies as the other “organs of state” should conduct themselves in governing their schools in terms of their statutory self-governing (autonomous) functions. They are obliged to practice democratic principles and values and should also govern their schools in a democratic, transparent and accountable manner.

In terms of section 15 of the South African Schools Act 84 of 1996, a public school is a “juristic person” with the legal capacity to perform its functions in terms of the Act. A juristic body cannot participate in the law in the same manner and to the same extent as a natural person. It has to act through its duly appointed agent. Section 16(1) of the South African Schools Act provides that the governance of a public school is vested in its governing body. Furthermore, the governing body stands in a position of trust (*fidei commissum*) towards the school: this simply means that a relationship of trust exists between the school and its governing body. The governing body always acts on behalf of the school (and in the name of the school) with the best interests of the school at heart.

The governing body does not function for its own benefit or enrichment, or that of certain of its members. The requirements of the trust relationship manifests in different ways, for example in the way the parent community has to make a resolution on the school budget and school fees, and in the way the governing body has to implement the parent resolution on school fees. To be transparent means that, for example, there must be an openness (and fairness) in governance and that interested parties must have access to relevant information (e.g. parents have access to the child’s medical report). Furthermore, accountability means to take responsibility, and to be held answerable for your actions and decisions. The trust relationship is not possible, or cannot succeed, without transparency and accountability.

Question 2

Searches and seizures must be conducted with care, strict rules and within the guidelines that inform searches and seizures at school (e.g. guidelines by the department, and embodied in the code of conduct). Searches/seizures reflect how the limitation of the rights of the learner (e.g. the right to privacy, human dignity, etc) is applied.

There must be a reasonable suspicion before the principal may decide on whether to conduct a search. It may be necessary for school officials to conduct searches of persons and property, for example, when searching for illegal drugs, alcohol or dangerous weapons. However, in carrying out such searches, the learners' personal dignity and privacy could be affected. When conducting searches and seizures it is important to take cognisance of the Bill of Rights, specifically the learner's right to privacy (section 14) and the right to respect and protect his or her dignity (section 10).

Section 14 of the Constitution states that everyone has the right to privacy, which includes the right not to have:

- (1) their person or home searched
- (2) their property searched

It is important to consider the place being searched. The closer the search comes to the person, the higher the risk of privacy invasion. The highest degree of invasion would be a strip-search and this should be avoided, while a lower degree of invasion would be searching a school desk. Boys and girls should be separated and searched by a person of the same gender. (In the case of searches for illegal drugs, the police should be involved in the search. Finding illegal drugs on the learner may constitute a criminal offence and the police need to deal with this.)

For this question, you must also refer to the relevant parts of section 8A of the South African Schools Act 84 of 1996 in detail.

Question 3

- (a) In terms of section 9(2) of the South African Schools Act 84 of 1996, a learner at a public school may only be expelled–
 - (i) by the Head of Department; and
 - (ii) if found guilty of serious misconduct after disciplinary proceedings contemplated in section 8 were conducted.

The school governing body does not have the authority to expel a learner from school. Only the HOD may expel a learner from school. Furthermore, the school governing body failed to conduct the necessary disciplinary proceedings contemplated in section 8 of the South African Schools Act 84 of 1996. Therefore, the expulsion is not legal.

- (b) Procedural fairness requires that the administrative organ or official follow correct and fair procedures and complies with procedural requirements. Procedural fairness is concerned with fair and proper procedures and is protected by section 33 of the Constitution. Procedural fairness and the rules of natural justice are similar in scope and content. These rules are embodied in two main principles, namely *audi alteram partem* (to hear the other side), and *nemo iudex in sua causa* (no one may be a judge in his own case).

The following can be seen as the basic elements of due process as prescribed in section 33 of the Constitution, the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and the South African Schools Act 84 of 1996:

(i) hearing and notice;

A learner must be given written notice of the time, date and place of the hearing. The learner must also be afforded the opportunity to state or present his/her side of the case, “if the hearing is to lead to the exercise of a discretion, which could affect the learner’s rights, privileges and freedoms” (Squelch J “The right to administrative justice: the implications for school governing bodies” (2006) *A critical chronicle of the South African Education Law and Policy Association (SAELPA) 1996-2005* 367).

(ii) impartial tribunal;

The decision in a dispute/an administrative proceeding must be made by an impartial tribunal. In education law, the principal and the school governing body are recognised as impartial bodies, “provided they do not have any personal stake in a hearing or its outcome, and do not act with malice or prejudice” (Squelch J “The right to administrative justice: the implications for school governing bodies” (2006) *A critical chronicle of the South African Education Law and Policy Association (SAELPA) 1996-2005* 367).

(iii) right to information;

Section 32 of the Constitution makes provision for the right of access to information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.

(iv) right to representation;

“A party to a hearing is usually entitled to legal representation where such assistance is necessary to ensure a fair hearing. Thus, although legal representation is not necessary, or permitted, for all administrative proceedings, it is accepted that a person who is party to a complex case or situation, which has serious consequences, does not have a chance to put his or her case unless he or she has assistance” (Squelch J “The right to administrative justice: the implications for school governing bodies” (2006) *A critical chronicle of the South African Education Law and Policy Association (SAELPA) 1996-2005* 368).

(v) reasons for the decision; and

Section 33(2) of the Constitution provides that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(vi) right to appeal

The law allows learners who have been affected by the decision of an administrative body to appeal against such decision. For example, section 9(4) of the South African Schools Act 84 of 1996 makes provision for a learner or the

parent of a learner who has been expelled from a public school to appeal against the decision of the Head of Department to the Member of the Executive Council.