



Tutorial Letter 101/3/2018

Legal Philosophy

LJU4801

Semesters 1 and 2

Department of Jurisprudence

This tutorial letter contains important information
about your module as well as the assignments.

PLEASE READ CAREFULLY!

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Dear Student

1 INTRODUCTION

Welcome to the module Legal Philosophy! This module is designed to not only teach you about legal philosophy, but also to encourage you to think critically about the law. This module is based on the ideals of graduateness, critical thinking, transformative constitutionalism and Africanisation.

We hope you will enjoy the journey of discovery with us.

2 PURPOSE AND OUTCOMES

2.1 Purpose

This module aims to provide a thorough grounding in and a broad perspective on theories and applications in legal philosophy. The focus is on knowledge of philosophy, but it is based on broader goals of transformative constitutionalism, graduateness and Africanisation. The module is compulsory for the LLB degree, but is also suitable for those who wish to acquire advanced knowledge of philosophy in the field of law. It is primarily intended for students who wish to pursue a career in the legal field in South Africa. The module will also teach critical thinking skills in the context of different knowledge forms and epistemologies.

2.2 Outcomes

On completion of this module, students will be able to:

- Apply the elements of critical thinking, reasoning, writing and research skills;
- Describe the complexities and uncertainties in legal philosophy;
- Discuss the history of main issues/problems in legal philosophy;
- Apply the four critical theories to suggest solutions for complex social problems;

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer

Prof IJ Kroeze
Brooklyn Campus 02-009
Tel: 012 433 9528
Cell: 079 1594465
Email: kroezij@unisa.ac.za
Fax: 086 763 4501

3.2 Department

The Department of Jurisprudence is located at:

Unisa Brooklyn Campus
Veale Street
Brooklyn
Pretoria
0181

3.3 University

General Unisa contact details may be found in the *Study @ Unisa* brochure, which you should have received upon registration. Remember to use your student number when you contact the University.

4 RESOURCES

4.1 Prescribed books

There are no prescribed books for this module.

4.2 Recommended books

Students are advised to consult sources referred to in the footnotes for additional material on the subject content.

4.3 Electronic reserves (e-reserves)

There are no e-reserves for this module.

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>

5 STUDENT SUPPORT SERVICES

There are a number of student support services available for this module:

- The lecturer is always available to answer questions and queries. However, please note the following:
 - Students MUST consult the resources, Frequently Asked Questions and announcements on *myUnisa* before contacting the lecturer.
 - Lecturers cannot assist with administrative queries and students need to contact the correct administrative department with queries. The details for these are in the brochures.
 - Please note that the cell phone number will only be active from 08:00 – 16:00 on weekdays.

- Email is ALWAYS the preferred method of communication as this allows for more detailed and thoughtful responses.
- *myUnisa* is the primary source of information on this module. All study material, additional resources and information will be posted on the site. Students must ensure that they visit the site once or twice a week.
- In addition, other types of support (like podcasts, videos, discussion forums and so forth) will also be placed on the site to assist students.

6 STUDY PLAN

The study plan for this module will follow the framework set out in the study guide. There are a number of self-assessment questions on every learning unit in the study guide and we urge you to complete these.

In addition, there is a self-assessment activity on every learning unit on *myUnisa*. These activities are of **CRUCIAL** importance! As you will see later, they will form part of the portfolio that will be your final examination for this module. If you neglect to complete them, you will not get marks for them.

7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

None.

8 ASSESSMENT

8.1 Assessment criteria

In general, please see the outcomes for this module under 2.2 above. Please note that students will be assessed on the following:

- Knowledge of the content of the study guide;
- Knowledge of additional research undertaken for the assignments;
- Research, reading, writing and referencing skills;
- Demonstrable critical thinking skills.

For additional information, see section 1.4 in your study guide.

The marking rubric for assignments and for the final portfolio can be found under "Additional resources" on *myUnisa*.

8.2 Assessment plan

The assessment for this module consists of the following:

1. There are **TWO COMPULSORY** formative assessments (assignments). If you do not hand in both assignments, you will not be granted admission to the examination.
2. The assignments comprise 40% of the final mark for this module.
3. The summative assessment (examination) for this module will be a **PORTFOLIO**. The portfolio will comprise 60% of the final mark for this module.
4. The **SELF-ASSESSMENT ACTIVITIES** on *myUnisa* will make up 20% of the mark for the portfolio. You will not submit these activities in the usual manner, but will attach them to

your final portfolio. This means that, should you not complete these activities and include them in your portfolio, it will affect your marks fairly seriously.

ALL ASSESSMENTS IN THIS MODULE MUST MEET THE FOLLOWING REQUIREMENTS:

1. All assignments must meet the formal requirements of the College of Law. A copy of these requirements can be found under "Additional resources" on myUnisa.
2. All assignments must be in English and must be submitted electronically. No manual submission will be accepted.
3. All assignments (except the Multiple-choice self-assessment) must contain correct references to sources consulted. A copy of the prescribed style of referencing can also be found under "Additional resources".
4. All assignments must contain a declaration of honesty. This is also supplied on the site, but students can re-type it or include a statement similar to the one supplied.
5. Late submissions will not be accepted unless mandated by University management. Please note that lecturers cannot grant extensions.

8.3 Assignment numbers

8.3.1 General assignment numbers

You have to submit TWO compulsory assignments to be granted examination admissions. These are referred to as Assignment 01 and Assignment 02.

Your final assessment (examination) is a portfolio and must be submitted as Assignment 03.

8.3.2 Unique assignment numbers

All three assignments also have unique numbers and these can be found below and on the specific assignment. Ensure that you submit the correct assignment under the correct unique code.

8.4 Assignment due dates

The due dates for the various assignments are as follows:

SEMESTER 1		
Assignment number	Unique number	Due date
Assignment 1	733856	2018-03-16
Assignment 2	895223	2018-04-06
Assignment 3 (Portfolio)	859689	2018-05-04
SEMESTER 2		
Assignment number	Unique number	Due date
Assignment 1	721317	2018-08-24
Assignment 2	835403	2018-09-07
Assignment 3 (Portfolio)	740635	2018-10-05

8.5 Submission of assignments

Assignments may NOT be submitted by fax, email or post. No manual submissions will be accepted.

You may ONLY submit assignments through the assignments portal on *myUnisa*. Your assignments must meet the rules set out under 8.2 above. The documents must be in PDF format and the system will not allow any other kind of submission.

8.6 The assignments

8.6.1 Assignments for semester 1

ASSIGNMENT 01: UNIQUE NUMBER 733856

DUE DATE: 2018-03-16

Question 1

For the five concepts listed below, provide:

- (a) A definition not found in the study guide
- (b) The full reference for the definition
- (c) An explanation of the definition in your own words not exceeding 60 words.

Please note: You MAY NOT use a definition found on the internet and you MAY NOT use a definition provided in the study guide or in any of the required readings.

The following concepts must be defined:

- 1.1 Transformative constitutionalism (5)
- 1.2 Legal philosophy (5)
- 1.3 Epistemology (5)
- 1.4 Legal positivism (5)

Question 2

In 2008 the former South African ambassador to Uganda wrote a column in a local newspaper entitled "Call me names, but Gay is NOT okay". The original article is posted on myUnisa and can also be accessed here: http://www.mambaonline.com/images/sundaysun_small.pdf

Write an essay in which you answer the following questions:

- 1.1 Can these statements be justified by a *natural law* approach? In your answer you must
- (a) Explain what natural law is in 100 words or less; (4)
 - (b) State if you think natural law justifies this or not; (1)
 - (c) Give reasons for your answer. (5)
- 1.2 Can these statements be justified by a *legal positivist* approach? In your answer you must
- (a) Explain what legal positivism is in 100 words or less; (4)
 - (b) State if you think legal positivism justifies this or not; (1)
 - (c) Give reasons for your answer. (5)

TOTAL FOR ASSIGNMENT 01:

[40]

ASSIGNMENT 02: UNIQUE NUMBER 895223

DUE DATE: 2018-04-06

Question 1

For the five concepts listed below, provide:

- (a) A definition not found in the study guide
- (b) The full reference for the definition
- (c) An explanation of the definition in your own words not exceeding 60 words.

Please note: You MAY NOT use a definition found on the internet and you MAY NOT use a definition provided in the study guide or in any of the required readings.

The following concepts must be defined:

- 1.1 Communitarianism (5)
- 1.2 *Ubuntu* (5)
- 1.3 African humanism (5)
- 1.4 Distributive justice (5)

Question 2

Using the same article you used for assignment 1, provide an African legal philosophical perspective on Qwelane's remarks.

For this question you will need to do more research to establish what the African approach is to homosexuality and to the question of LGBT marriage. You will therefore need to go far beyond the information provided in the study guide. In your answer you must address the following issues:

- (a) Explain what African legal philosophy is in 300 words or less; (5)
- (b) Explain the African approach to homosexuality; (10)
- (c) Briefly indicate if you agree with this and why. (5)

TOTAL FOR ASSIGNMENT 02:

[40]

ASSIGNMENT 03: UNIQUE NUMBER 859689

DUE DATE: 2018-05-04

Assignment 03 is the portfolio and will constitute **the final examination** for this module. It will be available from the start of the semester and you can submit it any time. Your portfolio must consist of the following documents:

- 1 Your answer to the specific question asked. (35)
- 2 The self-assessment activities. (20)
- 3 The honesty declaration. (5)

Please remember: In all cases the assessment of your answers will include not only the basic knowledge of legal philosophy, but also language usage, referencing, research and so forth.

Question

On *myUnisa* you will find (under additional resources) the following article:

De Vos P "The past is unpredictable: race, redress and remembrance in the South African constitution" 2012 *South African Law Journal* 73 – 103.

You must now write a **critical** essay on this article and you must include the following in your answer:

- 1 Provide a summary (250 words max) of the main *philosophical* argument in this article. (Please note this is not about constitutional law, but about legal philosophy)
- 2 A critical analysis/response (300 words each max) from the following philosophical perspectives: (You need only briefly summarise the various theories.)
 - 2.1 Critical Legal Studies
 - 2.2 Critical Race Theory
 - 2.3 Critical Gender Studies
 - 2.4 African Legal Philosophy
- 3 Your own *philosophical* view on the issues raised in the article. (300 words max)

Please note: Your answer can therefore not exceed 1800 words (or about 6 pages) and **MUST** be supplied with footnotes and a bibliography. For purposes of the word count the footnotes and bibliography are not counted.

8.6.1 Assignments for semester 2

ASSIGNMENT 01: UNIQUE NUMBER 721317

DUE DATE: 2018-08-24

Question 1

For the five concepts listed below, provide:

- (a) A definition not found in the study guide
- (b) The full reference for the definition
- (c) An explanation of the definition in your own words not exceeding 60 words.

Please note: You MAY NOT use a definition found on the internet and you MAY NOT use a definition provided in the study guide or in any of the required readings.

The following concepts must be defined:

- 1.1 Liberalism (5)
- 1.2 Libertarianism (5)
- 1.3 Justice (5)
- 1.4 Utilitarianism (5)

Question 2

In August 2017 the Ugandan government banned a planned gay pride celebration in that country. The state minister of ethics and integrity, Simon Lokodo stated: "No gay gathering and promotion can be allowed in Uganda. We can't tolerate it at all". The article in which this is reported can be found on myUnisa and can also be accessed here: https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt?CMP=share_btn_link.

Write an essay in which you answer the following questions:

- 1.1 Can these statements be understood from a *natural law* approach? In your answer you must
 - (a) Explain what natural law is in 100 words or less; (4)
 - (b) State if you think this is the result of a natural law approach; (1)
 - (c) Give reasons for your answer. (5)
- 1.2 Would your understanding of these statements be different if you used a *legal positivist* approach? In your answer you must
 - (a) Explain what legal positivism is in 100 words or less; (4)
 - (b) State if you think legal positivism would accept this or not; (1)
 - (c) Give reasons for your answer. (5)

TOTAL FOR ASSIGNMENT 01:

[40]

ASSIGNMENT 02: UNIQUE NUMBER 835403**DUE DATE: 2018-09-07**

Question 1

For the five concepts listed below, provide:

- (a) A definition not found in the study guide
- (b) The full reference for the definition
- (c) An explanation of the definition in your own words not exceeding 60 words.

Please note: You MAY NOT use a definition found on the internet and you MAY NOT use a definition provided in the study guide or in any of the required readings.

The following concepts must be defined:

- 1.1 African metaphysics (5)
- 1.2 Ethnophilosophy (5)
- 1.3 Decolonisation (5)
- 1.4 Negritude (5)

Question 2

In 2016 the political commentator Prince Mashele published an article in which he stated that "South Africa is finally an African country". The article is on myUnisa but can also be accessed here: <http://www.biznews.com/africa/2016/12/22/south-africa-will-finally-be-an-african-country/> (Date of use: 2017-08-22).

Write an essay in which you critically discuss whether Mashele's comments can be regarded as being in line with African legal philosophy. In your answer you need to address the following aspects:

- (a) Summarise the position of Mashele in 300 words or less; (5)
- (b) Explain what African legal philosophy is in 300 words or less; (10)
- (c) Indicate if you agree with Mashele based on your answer in (b). (5)

TOTAL FOR ASSIGNMENT 02: [40]

ASSIGNMENT 03: UNIQUE NUMBER 740635**DUE DATE: 2018-10-05**

Assignment 03 is the portfolio and will constitute **the final examination** for this module. It will be available from the start of the semester and you can submit it any time. Your portfolio must consist of the following documents:

- 4 Your answer to the specific question asked. (35)
- 5 The self-assessment activities. (20)
- 6 The honesty declaration. (5)

Please remember: In all cases the assessment of your answers will include not only the basic knowledge of legal philosophy, but also language usage, referencing, research and so forth.

Question

On *myUnisa* you will find (under additional resources) the following article:

Olivier M "A perspective on gender transformation of the South African judiciary" 2013 *South African Law Journal* 448 – 464.

You must now write a **critical** essay on this article and you must include the following in your answer:

- 4 Provide a summary (250 words max) of the main *philosophical* argument in this article. (Please note this is not about constitutional law, but about legal philosophy)
- 5 A critical analysis/response (300 words each max) from the following philosophical perspectives: (You need only briefly summarise the various theories.)
 - 5.1 Critical Legal Studies
 - 5.2 Critical Race Theory
 - 5.3 Critical Gender Studies
 - 5.4 African Legal Philosophy
- 6 Your own *philosophical* view on the issues raised in the article. (300 words max)

Please note: Your answer can therefore not exceed 1800 words (or about 6 pages) and **MUST** be supplied with footnotes and a bibliography. For purposes of the word count the footnotes and bibliography are not counted.

8.7 Other assessment methods

As stated previously, you need to complete the self-assessments posted on *myUnisa*. These will not be marked, but their correct completion will count towards your portfolio mark.

8.8 The examination

Please see information under 8.6.

9 FREQUENTLY ASKED QUESTIONS

Please see the FAQ tab on *myUnisa*.

10 SOURCES CONSULTED

Please see the sources cited in the study guide.

11 IN CLOSING

We hope that you will find this module stimulating and interesting. Remember that you can only get out what you put in!

PROF IJ KROEZE