



INTRODUCTION TO LAW
ILW1501

Semester 1

Feedback on Assignment 01

Department of Jurisprudence

1 FEEDBACK ON ASSIGNMENT 01

Detailed feedback on each question of Assignment 01, the written assignment, follows. Please compare your answers to the answers in the feedback in order to see where you have made your mistakes.

Question 1

The Krugers moved into the neighbourhood where the Mothibes and the Van der Merwes live. Both families welcomed the Krugers and invited them for a braai. Daan Kruger is a panel-beater and his wife Sarah is a teacher. Little did the Mothibes and the Van der Merwes know that Daan planned to run his panel-beating business from home in future. And then the noise started! Daan did not listen to the complaints of the neighbours and worked from early in the morning until late at night. The neighbours decided to approach Jane Mothibe for legal advice. She then asked you, her article clerk, to find the answers to the questions that follow.

1.1 Which **division** of the private law will be applicable to this scenario? Give a **reason** for your answer. (2)

Answer:

- **Division of the private law: The law of patrimony**

Reason:

- The law of patrimony concerns **persons and their means**. Peoples' "means" are **whatever they have with a value in money**.

[See Study Unit 5, p 52.]

1.2 Which **subdivision** of your answer in 1.1 will be applicable to this scenario? Give a **reason** for your answer. (2)

Answer:

- **Subdivision of the law of patrimony: The law of things** (also known as the **law of property**)

Reason:

- The law of things (or the law of property) deals with **movable and immovable things**. In this scenario we deal specifically with the **immovable properties of the neighbours**.

[See Study Unit 5, pp 52-53.]

1.3 Which right that belongs to the subdivision in 1.2 has been infringed? Give a reason for your answer. (2)

Answer:

- **Right that has been infringed:** A **real right**, namely the **right of ownership**

Reason:

- In the case of ownership, the owner of the property may **freely use and enjoy his/her property**. Ownership is therefore considered to be the most **comprehensive** (complete) **real right**. However, this comprehensive right may be **limited** in certain circumstances. This means that you **may not exercise your right in such a way that it infringes upon the rights of other persons**.

Note: We state in Study Unit 2 (p 28) that the law balances the interest of legal subjects. This, amongst others, means that a landowner may not do something which would be a nuisance to his neighbours. In this scenario, all the neighbours may freely use and enjoy their properties. However, the noise made by Daan Kruger's panel-beating business disturbs the peace in the neighbourhood and infringes on the right of the neighbours to use and enjoy their properties. Therefore, in order to balance the interests of the different legal subjects (i.e. the neighbours) the law limits Daan Kruger's right of ownership. He may not use the property that he owns to run a panel-beating business, as this would create a nuisance for his neighbours.

Question 2

Where will you find the following in the Choice on Termination of Pregnancy Act 92 of 1996?

- (i) The **name** of the Act (1)

Answer:

In the **short title** of the Act.

[See Study Unit 6, p 121 and p 124.]

- (ii) The **purpose** of the Act (1)

Answer:

In the **long title** of the Act. (1)

[See Study Unit 6, p 121 and p 124.]

- (iii) The **long title** of the Act

Answer:

In bold, **under the word "Act"**.

[See Study Unit 6, p 117; Study Unit 11, p 201.]

(iv) The **underlying philosophy** of the Act (1)

Answer:

In the **preamble** of the Act.

[See Study Unit 6, p 121 and p 124.]

Note: Many students did not read this question carefully and consequently lost a lot of marks. We specifically ask **where** you will find these components in the Act. We did not ask you to **describe** these components. Always read the question very carefully before you answer it!

Question 3

Precious and Beauty have been in a same-sex relationship for the past six years. They would like to get married, but are not sure whether gay people are allowed to marry. You are the couple's lawyer and they come to you for advice. Keeping the influence of the Constitution in mind, explain to Precious and Beauty what their legal position is and what different options they have at their disposal regarding their union. (6)

Answer:

The **Constitutional Court** decided that the **definition of marriage** in terms of the common law and the Marriage Act 25 of 1961 was **unconstitutional** on grounds of the **right to equality** and the **right to human dignity**. The Constitutional Court therefore decided that **permanent cohabitation relationships of same-sex and heterosexual couples** had to be **included in the definition of "marriage"**. The **Civil Union Act 17 of 2006** now **allows gay people (same-sex couples)** and heterosexual couples to enter into a **marriage** or a **civil partnership (civil union)**. The partners in such a civil union must **choose** whether they want **to call their union a marriage** or a **civil partnership**. A civil union has exactly the **same consequences as a civil marriage**, regardless of whether it is called a civil partnership or a marriage and it **dissolves in the same way as a marriage**.

Thus, Melissa and Rudene, as a same-sex couple, can enter into a civil union in terms of the Civil Union Act. They can call their union a marriage or a civil partnership. Their civil union has the same consequences as a civil marriage.

Note: The Constitution does not directly state that gay couples may get married. It is therefore not correct to say that "the Constitution determines that gay couples may get married". The Constitution provides for the right to equality and the right to human dignity. The Constitutional Court therefore decided that the fact that the permanent cohabitation relationships of gay couples was not included in the definition of "marriage" infringed on their rights to equality and human dignity and was therefore unconstitutional. As a result, the Civil Union Act was adopted which now allows gay couples to enter into a marriage or a civil union.

[See Study Unit 10, p 170.]

Question 4

One evening after drinking a few beers, Anna's boyfriend, Peter, hit her with an empty beer bottle over the head. Initially Anna had to pay R10 000 for medical expenses. However, a few days after the attack, doctors realised that Anna had also sustained serious eye injuries and that she had to undergo an eye operation which will cost her R 90 000.

Name the two different legal disputes that might arise from these facts. **Also** explain the **purpose** of each of the disputes that you name. (4)

Answer:***Dispute 1:***

Type of dispute: Criminal case (also known as a criminal dispute, criminal action, criminal procedure or criminal proceedings).

Purpose of dispute 1: The purpose of a criminal case is that the state will usually want to **punish** (e.g. by means of a fine or imprisonment) **the accused** for committing a **crime**.

Thus, in this scenario the state will punish Peter (the accused) for committing the crime of assault by hitting Anna.

Dispute 2:

Type of dispute: Civil case (also known as a civil dispute, civil action, civil procedure or civil proceedings)

Purpose of dispute 2: The purpose of a civil case is to provide the plaintiff with the opportunity to claim financial damages (also known as compensation) from the defendant.

Thus, in this scenario Anna (the plaintiff) may claim financial damages (compensation) from Peter (the defendant) for her medical expenses, due to her injuries.

[See Study Unit 11, pp 185-187; Study Unit 12, pp 210-212.]

Note: Some students did not read this question carefully and consequently lost marks. We specifically ask the **purpose** of these two disputes. We do not ask that you **describe/define** these disputes. Again, carefully read the question before you answer it!

TOTAL: [20]

2 A SERIOUS WARNING!

Students usually do well in their assignments, especially the multiple-choice question assignments, because the questions in the assignments are short and students have their study material at hand when they answer the assignment questions. Be warned! If you obtained good marks for your assignments, in other words, if you obtained a good semester mark, it does not necessarily mean that you will obtain a good mark in the examination. Do not allow a good semester mark to create a false impression that you already know the study material for ILW1501 for examination purposes. Remember, the examination is very different! In the examination paper different types of questions are asked (see in this regard Tutorial Letter 102/2018). You are also not allowed to take your study material with you into the examination venue. In the examination your knowledge is tested without you having access to your study material. Thus, for the examination you have to study the study material for ILW1501 thoroughly.

You are welcome to contact us should you have any further questions regarding the assignments, the feedback on the assignments or the contents of the study material. Should you happen to be in Pretoria, you are most welcome to make an appointment and pay us a visit.

Yours sincerely,

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