Tutorial Letter 201/2/2018

INTRODUCTION TO LAW
ILW1501

Semester 2

Department of Jurisprudence

IMPORTANT INFORMATION
This tutorial letter contains the feedback on the two assignments for the module.
Dear Student

In this tutorial letter we want to share the following information with you:

1. YOUR LECTURERS FOR 2018
2. MODULE CODE FOR INTRODUCTION TO LAW
3. STUDY MATERIAL FOR ILW1501
4. ASSIGNMENTS, SEMESTER MARK AND ADMISSION TO THE EXAMINATION
5. FEEDBACK ON ASSIGNMENT 01
6. FEEDBACK ON ASSIGNMENT 02
7. A SERIOUS WARNING!

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1. YOUR LECTURERS FOR 2018

Your lecturers for 2018 are:

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Please do not hesitate to contact us should you experience any problems in connection with the contents of the study material for ILW1501. You can phone us, make an appointment to come and see us personally, write a letter or send an e-mail. You can also communicate with us via Forums 2, 3 and 4 under “Discussions” on myUnisa.

Make sure that you solve all your problems with regard to the study material before the examination! After the examination it will be too late!

2 MODULE CODE FOR INTRODUCTION TO LAW

Just a reminder that the module code for Introduction to Law has changed from ILW1036 to ILW1501. Please read Tutorial Letter 101/2018, paragraph 1 (p 5) and paragraph 4.5 (p 7) again.

3 STUDY MATERIAL FOR ILW1501

NOTE: The Department of Dispatch should supply you with the hard copy study material for ILW1501. The lecturers cannot supply you with any hard copy study material.

ALSO NOTE: By accessing the Internet, you will find the Study Guide and tutorial letters for the module ILW1501 on the University's online campus, myUnisa, at http://my.unisa.ac.za. Unfortunately, the DVD cannot be made available on myUnisa. However, the complete text of the DVD can be found in Study Unit 11 of the Study Guide. It is sufficient to study only Study Unit 11 for the examination, without watching the DVD also.

The complete study package of ILW1501 for examination purposes consists of:

- **A Study Guide**
  - Entitled: "Only study guide for ILW1036"
  (Please note: This is indeed the correct Study Guide for ILW1501. ILW1036 was the old code for ILW1501.)

- **A DVD**
  - Entitled: "The laws of our lives"
  (Please note: The complete text of the DVD is printed in Study Unit 11 of the Study Guide. Again, it is sufficient to study only Study Unit 11 for the examination, without watching the DVD also.)

- **Tutorial Letters**
  - General information regarding the University and the module ILW1501; information regarding the
assignments and admission to the examination for both semesters; Assignment 01, the written assignment; Assignment 02, the multiple-choice question assignment; Assignment 03, the self-evaluation assignment and its feedback (pp 46-53 of Tutorial Letter 101)(the first tutorial letter)

Tutorial Letter 102/2018 - Lecturers for 2018; study the brochure STUDY@UNISA and the tutorial letters for ILW1501; module code for Introduction to Law; study material for ILW1501; myUnisa; information regarding the assignments and admission to the examination for both semesters; information regarding the examination for both semesters; how to complete a mark-reading sheet in the examination (the second tutorial letter)

Tutorial Letter 201/2018 - This tutorial letter contains, inter alia, the feedback on Assignment 01 and Assignment 02 (the final tutorial letter). This tutorial letter might only be available online on myUnisa, in electronic format. Therefore, should you not receive it in hard copy, you must access it on myUnisa under “Official Study Material” or “Additional Resources”.

PLEASE NOTE: There is no prescribed textbook for ILW1501. You do not, therefore, have to buy any additional books. You also need not worry about any further reading material for this module. You need only study the Study Guide (entitled "Only Study Guide for ILW1036") and the other tutorial letters that you receive.

ALSO NOTE: The Study Guide and all the above-mentioned tutorial letters are available electronically on myUnisa under “Official Study Material” or “Additional Resources”.

4 ASSIGNMENTS, SEMESTER MARK AND ADMISSION TO THE EXAMINATION

Once again study Tutorial Letter 101/2018, paragraph 8 (p 10) regarding the assignments, admission to the examination and your semester mark.

5 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

Explain why the South African legal system is classified as a mixed legal system. (4)

Answer:

Various legal systems from different legal families played a role in the development of South African law.

The first legal system that played a role was the Roman-Dutch law, which forms part of the civil-law legal family. The second legal system is English law, which forms part of the common-law legal family. The third legal system that also played a role was African indigenous law, which forms part of the indigenous legal family.

[Study Unit 4, pp 45-46; p 48]

Question 2

Jane Mothibe agreed with Technicolour Painters that they would paint the Mothibe's house. In terms of the agreement Technicolour Painters would provide the paint and labour for which Jane would pay them R20 000. They also undertook to finish the job within three weeks. However, after three weeks Technicolour Painters had only managed to paint half the house. Jane was furious. To make matters worse, it appeared that they had broken a valuable statue in Jane's garden. Jane wants to sue them for breach of contract and for breaking the valuable statue.

2.1 Will public law or private law be applicable to this problem? Give a reason for your answer. (2)

Answer:

Private law

Reason:

Private law will be applicable because the purpose of private law is to ensure that the interests of individuals are protected. Therefore, private law deals with the legal position between individual and individual.

[Study unit 5, pp 50-51]

2.2 Which division of your answer in 2.1 will be applicable? Give a reason for your answer. (2)

Answer:

Law of patrimony
Reason:
Law of patrimony concerns persons and their means with a value in money.

[Study unit 5, p 52]

2.3 Which subdivision of your answer in 2.2 will be applicable? Give a reason for your answer. (2)

Answer:
Law of obligations

Reason:
An obligation is a (legal) relationship between two (or more) parties in terms of which one party has a right against another party for performance and the other party a (corresponding) duty to perform.

2.4 Name two further subdivisions of your answer in 2.3 that will be applicable to our scenario and explain why. (4)

Answer and explanation:

(1) Law of contract

Jane Mothibe and Technicolour Painters concluded a contract (an agreement).

Since a contract is one of the ways in which an obligation can arise, the contract between Jane Mothibe and Technicolour Painters creates an obligation (a legal relationship).

In terms of their contract, Jane Mothibe, on the one hand, has a right against Technicolour Painters for performance (painting Jane Mothibe’s house under three weeks) and Jane Mothibe, on the other hand, has a corresponding duty to perform (pay Technicolour Painters R20 000).

(2) Law of delict

By breaking a valuable statue in Jane’s garden, Technicolour Painters committed a delict. A delict is a wrongful act committed by a party that causes damages to another party.

Since a delict is another way, in which an obligation can arise, the fact that Technicolour Painters broke a valuable statue in Jane’s garden constitutes a delict. Therefore, Jane Mothibe, on the one hand, has a right against Technicolour Painters for performance (replacement of the statue or paying her compensation) and Technicolour Painters, on the other hand, has a
corresponding duty to perform (to replace the statue or to pay Jane for the damage of the statue).

[Study unit 5, p 53]  [10]

Question 3

A number of special features have been built into our Constitution of 1996 to ensure that our democracy succeeds. The supremacy of the Constitution is one of these special features. Write a paragraph in which you discuss the supremacy of the 1996 Constitution.

You were expected to refer to the following in your answer:

- **The meaning of “supremacy” of the Constitution**

  The Constitution of 1996 introduced “constitutionalism”. This means that South Africa is run according to the Constitution, which is the supreme or highest law of the Republic of South Africa.

- **Who or what is ruled by the Constitution?**

  Since the Constitution is the supreme or highest law in South Africa, everyone (even the President), every organisation or institution (including all government institutions and state organs), as well as all law (including legislation, common law and African indigenous law) are subject to, or ruled by, the Constitution.

- **Consequence(s) of constitutionalism**

  A very important consequence of constitutionalism is the authority of courts to question/test legislation made by parliament. If any statute or section(s) thereof is in conflict with the Constitution (does not agree with the Constitution), it is invalid and may be challenged (tested) in terms of the Constitution in a court and may be amended (changed) or abolished (removed) by parliament.

  **Note:** It is important to note that during the previous dispensation (i.e. before the 1993 and 1996 Constitutions), the principle of parliamentary sovereignty was applied. This means that parliament was supreme or sovereign and the courts did not have the authority to challenge legislation made by parliament. When parliament was supreme, it could make any law it wanted to, no matter how unjust or unfair, as long as the correct procedure was followed.

[Study unit 7, p 135]  [6]

TOTAL: [20]
Detailed feedback on each question of Assignment 02 follows. Please compare your answers to the answers in the feedback in order to see where you have made your mistakes. Remember, this assignment is based on the entire Study Guide for ILW1501.

Question 1
Options (1), (2) and 4 are the three basic requirements that formal law has to comply with in order to achieve formal justice.

Therefore, option (3) is not a requirement for formal justice and the option that you had to choose.

[Study unit 1, p 18]

Question 2
Option (4) is correct. Clarence’s right to appear in court is called a capacity.

It is important to note that when we speak of a “right to appear in court”, we are speaking of an “ability” which the law gives to a person in accordance with his/her status or legal standing. In legal terms, this ability is called a “capacity”.

[Study unit 2, p 27]

Question 3
Options (1), (2) and (4) are incorrect because the legal disciplines referred to in each option do not all fall within private law.

Therefore, option (3) is correct. Law of persons, law of personality and law of patrimony are all legal disciplines that fall within private law.

[Study unit, p 52 and p 56]

Question 4
Option (4) is clearly correct. The Government Gazette is the official publication in which legislation is published.

[Study unit 6, p 78]
Question 5

Options (1), (2), and (4) are incorrect because the 1996 Constitution is not our first Constitution; it is not a codification of South African law; and it is not an ordinary statute just like all other statutes.

**Option (3) is therefore correct** because the 1996 Constitution of South Africa is a written and democratic Constitution.

[Study unit 7, pp 132-133]

Question 6

Options (1), (3) and (4) are all three examples of first generation rights.

Therefore, option (2) is correct. The right to education is an example of a second generation right.

[Study unit 8, pp 141-142]

Question 7

**Option (1) is correct** and therefore the option that you had to choose. A state (public) prosecutor, an attorney and a magistrate are the role players in a criminal case in the magistrate’s court.

Since option (1) is correct, options (2), (3) and (4) are incorrect.

[Study unit 11, p 186 and pp 214-215]

Question 8

**Option (2) is correct.** In the case of *Naude and Another v Fraser* 1998 (4) SA 539 (SCA), (4) refers to the volume in which the case can be found.

[Study unit 6, p 84]

Question 9

**Option (3) is correct.** Section 3(3) of the Right of Appearance in Courts Act 62 of 1995 determines that attorneys who have acquired the right of appearance in the High Court may also appear in the Constitutional Court.

Options (1), (2) and (4) are therefore incorrect.

[Study unit 13, p 215]
Question 10

In options (2), (3) and (4), we refer to attorney, advocate and prosecutor. They are all role players in a criminal case.

Option (1) is therefore the option that you had to choose since a defendant is not a role player in a criminal case, but a role player in a civil case.

[Study unit 11, p 212]

TOTAL: [10]

7 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.

We trust that you have enjoyed this module and wish you every success in your preparation for the examination.

Yours sincerely,

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DR S MAHOMED
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