

Tutorial Letter 201/1/2018

Land and Housing

LAH 3701

Semester 1

Department of Private Law

This tutorial letter contains important information about your module.

Bar code

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Dear Student

1 DISCUSSION CLASSES

Please note that no discussion classes will be held for the module Land and Housing this semester.

2 ADMISSION TO THE EXAMINATION

As indicated in Tutorial Letter 101/3/2018, there are **two compulsory** assignments for this module. Submission of Assignment 01 is a prerequisite to gain admission to the examination. Although it is not required that you pass Assignment 01, it will count **10% towards your final mark for this module**. Failure to submit Assignment 02 will not influence your examination admission (only the submission of Assignment 01 will give you examination admission), but Assignment 02 also contributes **10% towards your final mark for this module**. The self-assessment activities as contained in your study guide allow you to evaluate your answers yourself.

Previous question papers are also loaded into myunisa site and it is vital that you visit the myunisa site under additional resources for them. Note no Memorandum will be loaded into the site or such be provided to the student. Start now to prepare yourself for the examination. Most students often wait for the last week of the examination before contacting us for clarity or assistance. It is therefore advisable to be in contact with us now and not wait for the eleventh hour to do so.

3 TUTORIAL LETTERS

The tutorial letters sent to you throughout the semester are extremely important, as they are a means of keeping in touch with you and informing you of new developments. To date, you should have received Tutorial Letter 101 and the study guide. If you are not in possession of this tutorial letter, contact the Department of Despatch (Room 2-27A Cas Van Vuuren Building) as soon as possible. The relevant address is:

The Department of Despatch

PO Box 392

UNISA

0003

4 COMMENTARY ON ASSIGNMENT 01

4.1 General

This is a compulsory assignment and submission is a prerequisite for admission to the examination. In order to gain admission to the examination, it is not required that you pass this assignment, but since the mark you obtain for Assignment 01 will **contribute 10% towards your final mark** for this module, it will be to your advantage to do well in it.

The following general assessment criteria were used to evaluate your assignment:

As explained in Tutorial Letter 101, once marked, your assignment will be judged for the correct use of language. Up to 10% (2 marks) may be deducted for grammatical errors, poor language or merely copying parts of your study guide without reflecting the contents in your own words.

4.2 Questions and answers

FIRST SEMESTER	
ASSIGNMENT 01	
CLOSING DATE	28 FEBRUARY 2018
UNIQUE NUMBER	719828
WEIGHT	10%

Question 1

What do you understand under the following concepts?

- (i) Permission to occupy (PTO) certificates (2)

PTO was the statutory form (½) of land tenure by which unsurveyed communal land in rural areas was occupied (½). PTO certificates had been granted in respect of land held in trust by the state (½) or the SADT on behalf of a tribe or community (½). Permission to occupy residential and arable land had to be authorised by the commissioner or magistrate (½) after consultation with the tribal or community authority (½). While a traditional leader had no power to issue permissions to occupy, (½) it seems as if it was impossible to obtain a PTO certificate without the approval of the traditional leader (½).

[Possible 4 marks]

[LAH3701 STUDY GUIDE, p 40]

- (ii) Land redistribution (2)

Section 25(5) of the Constitution authorises land redistribution (½). Land redistribution entails the rectification of a state of affairs (½), namely the unequal distribution of land generally (½), and the modus operandi is to employ various methods to promote a more

equal land distribution pattern (½). These methods include legislation, projects and programmes (½). Most of these methods of redistribution are aimed at making land available to those who hold an inequitably small share of land (½) or no land at all, namely blacks (½).

[Possible 3(½) marks]

[LAH3701 STUDY GUIDE, p 53]

(iii) Land-tenure reform (2)

Section 25(6) of the Constitution authorises land-tenure reform (½). The aim of the land-tenure reform is to amend (½) and improve these rights so as to make them secure (½). The purpose is therefore not to restore lost rights or to provide access to land (½), but simply to amend the law so that weak (½) and insecure rights acquire legal recognition and protection (½).

[Possible 3 marks]

[LAH3701 STUDY GUIDE, p 54–55]

(iv) Restitution of land rights (2)

Section 25(7) of the Constitution authorises land restitution (½). The restitution of land rights is aimed at returning specific pieces of land (½) that were taken away from specific people during the apartheid era, (½) to those same people (½). The process of restitution can take different forms (½), and a number of initiatives taken by the government amount to restitution procedures in some way or another (½). The most important part of the restitution process in South African law takes place in terms of the Restitution of Land Rights Act 22 of 1994 (½).

[Possible 3 marks]

[LAH3701 STUDY GUIDE, p 56]

(v) Affordability within the right to housing context (2)

People must be able to afford housing (½). They must not be deprived of other basic needs to pay for their housing (½). In addition, governments must make housing subsidies and finance available, (½) and must protect people from unreasonably high or sudden rent increases (½).

[LAH3701 STUDY GUIDE, p 71]

Question 2

Fully discuss in your own words the successes and failures of the land reforms in South Africa.

[5]

If one must judge the successes and failures of land reform in South Africa, one has to look at each of the three programmes individually. Numerous authors and commentators are of the view that land reform has not been the success that it was hoped it would be. In general, the following comments are appropriate:

As far as land redistribution is concerned, the view is that there is no real vision as to what it is that government wants to achieve (½). Government's stated intention was to redistribute 30% of agricultural land (24,6 million hectares) to black South Africans by 2014 but, by June 2009, (½) only 6,7% (5,5 million hectares) had been redistributed. In addition, (½) 1 250 LRAD farms had failed, 362 were unproductive and an additional 275 were on the verge of being unsustainable (½).

Land restitution is a story of mixed successes and failures (½). While some 95% of claims have been finalised, the remaining 5% relate to complex rural claims (½). There is generally a lack of post-settlement support for new owners on land that has been restored, resulting in many failed projects (½). Some figures suggest that 90% of land that has been restored is lying fallow (½).

In the area of land-tenure reform, a number of statutes have been passed that aim to protect vulnerable people from evictions (½). Simultaneously, though, the state is failing to protect many people from eviction or is failing to supply them with alternative land (½). As far as

upgrading land-tenure rights is concerned, there are many pitfalls in doing this, most notably with regard to communal land (½), where the security of tenure of rural people has still not been addressed. (½)

[Possible 6 marks]

[LAH3701 STUDY GUIDE, p 57]

Question 3

Briefly explain the challenges the South African government is experiencing in providing the right to adequate housing to the poor. [5]

The new government's inheritance of a situation of housing chaos brought home the harsh reality that many people were (½), and still are, trapped in scattered, large informal settlements, with millions disadvantaged and dispossessed (½). Since 1994, the major challenge for the government has been to eradicate apartheid's settlement policies, (½) including backlogs in respect of land and housing, and to restore land rights to those who had previously been forcibly dispossessed (½).

According to the 2011 Annual Report of the Department of Human Settlements, the government has, since 1994, constructed and delivered about 2,8 million houses (½) through the provision of low-income housing subsidies for the homeless in particular, as well as for the unemployed and low-income earners (½). By so doing, it has also provided more than a million families with the opportunity to secure title to old public-housing stock that they occupied in the form of leasehold during the apartheid era (½). The government has taken steps to ensure that poor people also enjoy an adequate standard of living as promised by the Constitution (½).

However, despite having delivered over 2,8 million housing units and having made significant progress in tackling homelessness, (½) a number of problems remain (½). The country still has a housing backlog of more than 2,1 million, (½) which is increasing. In 2007, the then Minister of Human Settlements stated that R102 billion would be required over three years to clear the housing backlog, (½) and that this amount would more than double to R253 billion in 2016 (½) (this is nearly 20 times the entire current annual housing budget). You must be mindful of the fact that statistics change regularly and that this figure is likely to increase (½).

[Possible 7 marks]

[LAH3701 STUDY GUIDE, p 62–63]

Total

[20]

FIRST SEMESTER	
ASSIGNMENT 02	
CLOSING DATE	04 APRIL 2018
UNIQUE NUMBER	705753
WEIGHT	10%

INSTRUCTIONS ON HOW TO USE A MARK-READING SHEET

Assignment 02 contains multiple-choice questions and must be completed on a mark-reading sheet.

Please write the correct unique assignment number for the appropriate module on the mark-reading sheet.

Please fill in all the required details correctly. These include your name, student number, address, course code and the unique number for the assignment.

For this purpose, please refer to the booklet entitled *Study @ Unisa* before you start answering the questions.

Keep in mind that the questions for this assignment consist only of multiple-choice questions, with each question having four possible answers. This implies that you only have to mark 1, 2, 3 or 4 on your mark-reading sheet for each of the ten questions.

NB

Mark 1 on the sheet, next to the relevant question number, if your answer to the specific question is (a).

Mark 2 on the sheet, next to the relevant question number, if your answer to the specific question is (b).

Mark 3 on the sheet, next to the relevant question number, if your answer to the specific question is (c).

Mark 4 on the sheet, next to the relevant question number, if your answer to the specific question is (d).

Make sure that you answer the questions in Assignment 02 in this way.

Question 1

South Africa became a Republic in

(a) 1959

(b) 1961

(c) 1960

(d) 1652

[LAH3701 STUDY GUIDE, p 6]

Question 2

The Union of South Africa came into being in

(a) 1907

(b) 1908

(c) 1909

(d) 1910

[LAH3701 STUDY GUIDE, p 6]

Question 3

The homelands of Bophuthatswana, Ciskei, Transkei and Venda had been established as independent states from:

- (a) 1976 to 1981**
- (b) 1977 to 1982
- (c) 1975 to 1980
- (d) 1978 to 1982

[LAH3701 STUDY GUIDE, p 7]

Question 4

Which Act was the first legislative attempt to divide land on a racial basis by setting aside “scheduled areas” for exclusive occupation and acquisition by black people?

- (a) Development Trust and Land Act 18 of 1936
- (b) Group Areas Acts 41 of 1950 and 36 of 1966
- (c) Black Land Act 27 of 1913**
- (d) Promotion of Bantu Self-government Act 46 of 1959

[LAH3701 STUDY GUIDE, p 10]

Question 5

The main aim of the Restitution of Land Rights Act is to

- (a) keep specific pieces of land that were taken from specific people during the apartheid era from those same people
- (b) return specific pieces of land that were taken from specific people during the apartheid era to those same people**
- (c) return all pieces of land that were taken from specific people during the apartheid era to those same people
- (d) give specific pieces of land that were taken from specific people during the apartheid era to different people

Question 6

Homelessness was defined in _____ as any time between the date upon which the court order is to be made regarding the time the occupier must vacate the property up to the date upon which the eviction order is to be effected (in the event that the occupier does not vacate the property), taking into account that the occupier is able to find alternative accommodation that is (a) of a comparable or better standard to and (b) at a similar rental to and (c) within reasonable proximity to that of the property from which the eviction is sought.

- (a) *Johannesburg Housing Corporation (Pty) Limited v the Unlawful Occupiers of the Newtown Urban Village* case no: 2011/30368

- (b) *Makama and Others v Administrator, Transvaal* 1992 (2) SA 278 (T)
- (c) *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC)
- (d) *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* 2008 (3) SA 208 (CC) 400

[LAH3701 STUDY GUIDE, p 61]

Question 7

“Positive obligation of the state” in terms of section 26 of the 1996 Constitution means:

- (a) The state must not guarantee/provide all necessary infrastructure likely to support those identified to be in need of housing.
- (b) The state may guarantee/provide all necessary infrastructure likely to support those identified to be in need of housing.
- (c) The state must guarantee/provide all necessary infrastructure likely to support those identified not to be in need of housing.
- (d) The state must guarantee/provide all necessary infrastructure likely to support those identified to be in need of housing.**

[LAH3701 STUDY GUIDE, p 68]

Question 8

Section 26(2) of the 1996 Constitution provides that

- (a) no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property
- (b) the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right**
- (c) everyone has a right of access to adequate housing
- (d) no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances and no legislation may permit arbitrary evictions

[LAH3701 STUDY GUIDE, p 72]

Question 9

In terms of section 25(3) of the 1996 Constitution, the amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:

- (a) the reason for the acquisition and use of the property
- (b) the purpose of the property
- (c) the market value at expropriation
- (d) the current use of the property**

[LAH3701 STUDY GUIDE, p 55]

Question 10

In terms of section 25(1) of the 1996 Constitution, “deprivation” is defined as

- (a) an uncompensated, regulatory restriction or limitation on the use, enjoyment and exploitation of property in terms of legislation or other “law”**
- (b) a compensated state acquisition or destruction of property
- (c) restoring lost rights or providing access to land, but simply to amend the law so that weak and insecure rights acquire legal recognition and protection
- (d) the rectification of a general state of affairs, namely the unequal distribution of land generally

[LAH3701 STUDY GUIDE, p 53]

Total:

10

6. CONCLUSION OF THE SEMESTER'S WORK AND INFORMATION ON PREPARATION FOR THE EXAMINATION

6.1 Information on preparation for the examination

PLEASE ENSURE THAT YOU HAVE THE CORRECT EXAMINATION DATE AS IT APPEARS ON THE **FINAL** EXAMINATION TIMETABLE.

You should study **all the tutorial material** for examination purposes, in other words

- the only study guide for LAH3701
- all the cases on the list of prescribed cases in Tutorial Letter 101
- the names and purposes of the listed legislation as explained in the study guide.

6.2 Tips for the examination

- Time management is key to successfully completing any examination.
- Ensure that you pay attention to the additional study material, such as new cases and legislation provided in the tutorial letters.
- Ensure that you know and can clearly distinguish between different legal concepts.
- It is important to read a question carefully and make sure you know what is asked. Students often omit the necessary detail or give more than is necessary, which may have an impact on the time within which they have to complete the paper. So,

for instance, there is a very big difference between “mention” or “name” and “discuss”. A good idea is to highlight certain key words in the question.

- In a problem question, the facts are meant to guide you towards your answer or conclusion. At no point are the facts meant to confuse or mislead you. Make sure that you understand the facts before you attempt to answer the particular question. Do not jump to conclusions without explaining how you arrive at it.
- Before you attempt to answer a question, please look at the mark allocation, as this will give an indication of how much you are expected to write.

7. INFORMATION ON THE EXAMINATION PAPER

As explained in Tutorial Letter 101/3/2018, the examination at the end of the semester will consist of a two-hour paper worth 100 marks. To gain entrance to the examination, you must submit the compulsory assignment. In order to pass, you need to obtain at least 50% for the examination paper.

Since this is the last tutorial letter we shall send you this semester, we wish to take this opportunity to give you some information on the examination and the examination paper.

The paper consists of only one section to be **filled in on the examination paper**. The format of the paper covers a broad range of questions taken from the entire study guide, namely study units 1 to 9. We use an integrated method of assessment whereby you will be examined by way of short and long questions, which are direct questions and problem questions.

The first examiners are Dr B Mmusinyane and Prof Ina Knobel.

We trust that this tutorial letter will be of help to you. Best of luck with your preparation for the examination.

Dr BO MMUSINYANE

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