

Tutorial Letter 202/2/2018

Historical Foundations of South African Law HFL1501

Semester 2

Department of Jurisprudence

This tutorial letter contains the
PORTFOLIO EXAMINATION for this
module. Please read ***all*** pages carefully

BARCODE

Dear Student

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1 GENERAL INFORMATION ON THE PORTFOLIO

1.1 What is a portfolio?

This module's summative assessment (final examination assessment) takes the form of a written portfolio, which students complete at home. In other words, ***no written venue-based exam will take place for this module.*** Instead, the non-venue based assessment is referred to as a portfolio and takes the form of an open-book examination.

This portfolio is not a portfolio of evidence, which consists of small assignments completed throughout the semester. It is also not a single essay in which you summarise the study material. **This portfolio examination asks that you complete a series of questions on the content of the entire Tut Letter 501. These questions may be found in this Tut Letter 202, from page 10.** This portfolio examination represents the final assessment in this module. For this reason, **the same rules and policies that apply to venue-based examinations also apply to the portfolio.** Therefore, please do not contact any of the lecturers for guidelines or assistance when completing this assessment.

This Tut Letter 202 contains not only the questions of the portfolio examination, but also detailed information on the requirements for the portfolio, as well as instructions on how to submit the portfolio online via myUnisa.

1.2 Examination date: 22 October 2018
Unique number: 541425

This module is offered in a semester period of fifteen weeks. This means that since you are registered for the second semester, you will write the portfolio examination in October 2018; the supplementary examination will be written in May 2019. **No other dates will be scheduled for supplementary examinations.**

Your examination timetable indicates “**departmental requirements**” as the date on which the HFL1501 examination takes place. Because this module has a portfolio examination, the date is scheduled by the Department of Jurisprudence, and not by the Examinations Division of Unisa. Students who registered for HFL1501 in the **second semester** must submit their portfolio examination **ON OR BEFORE midnight (23:59) on 22 October 2018**. Absolutely **no exceptions** will be made in this regard.

1.3 Examination period

This is a semester module. That means that, since you are registered for the second semester, you must submit the portfolio in October 2018; the supplementary examination will take place in May 2019.

1.4 The scope of the portfolio examination

It is important to study all your tutorial letters *in their entirety* before you attempt to complete the portfolio. You should not ignore any part of the study material when you prepare for the portfolio. Remember, the contents of Tutorial Letter 501 form an integrated whole. This means that the contents of all the learning units and all three parts are interrelated. Therefore, you may have to consult various learning units or parts of the study material when you answer some of the portfolio questions. The Tutorial Letter 501 also refers you to specific sections of the Constitution of the Republic of South Africa, 1996. These specific sections also form part of the study material for this module.

Please note that **no sources other than the prescribed study material should be used** to complete this portfolio examination.

1.5 The format of the portfolio examination

The portfolio consists of three different sections, each containing various questions focussing on a different part of the study material. The portfolio counts 100 marks and consists of questions counting between one and ten marks each. The portfolio also test your ability to follow the School of Law’s prescribed style and referencing guidelines.

The composition of the portfolio examination is as follows:

Part 1: The origins of South African law (20 marks)

Part 2: Historical foundations of property law and obligations (55 marks)

Part 3: The role of the Constitution in South African legal development (20 marks)

Rubric: Technical aspects (5 marks)

TOTAL: 100

1.6 Preparing for the portfolio examination

In HFL1501 it is absolutely crucial that you work through all the study material (more than once) before attempting the portfolio questions. All the parts and learning units in this module are related to each other and you should be able to illustrate that you understand how the content of the module interrelates (or how it all fits together). **You cannot answer a portfolio question by paging to a relevant paragraph in the study material and trying to find an answer there.**

1.7 Understanding plagiarism

It is of extreme importance that you understand what plagiarism is. Students who commit plagiarism in their answers will be severely penalised and **may fail the module** as a result. You lecturers and markers know the contents of the study material well and knows when a student has plagiarised. We also immediately notice if a student copies from the prescribed Tutorial Letter 501, from another textbook or from an internet source.

If you plagiarise in the portfolio examination, we will report the matter to the Student Disciplinary Division. If you are found guilty of plagiarism, you may be expelled from the University for a number of years. Plagiarism is a very serious CRIMINAL offence. Individuals with criminal records based on dishonesty and fraudulent actions may not be admitted as legal practitioners.

1.8 Applying for study leave from your employer

Some students who work full-time are allowed to apply for study leave from their employers. Modules that have a portfolio examination do not have an examination date listed on the official examination timetable. This examination date is provided in the tutorial letters.

To apply for study leave, you should provide your employer with your examination timetable (which lists HFL1501), your proof of registration with the University (which

proves that you are registered for HFL1501 for this semester), as well as a letter indicating that HFL1501 is a module with a portfolio examination due on 22 October 2018, and that study leave may be granted for the completion of this portfolio. This letter is signed by the module leader and the Director of the School of Law.

This letter can be found on this module's myUnisa site, under the link for "Additional resources". Please see the folder titled "Portfolio examination". Due to the vast number of students registered for this module, **no individual letters will be provided to students**. This general letter should be sufficient when applying for study leave.

Please note that study leave applications are a matter between the student and the employer.

2 INSTRUCTIONS FOR THIS PORTFOLIO

**Please read all the instructions *carefully*.
Failure to do so could negatively affect your
performance in this portfolio examination.**

Claiming that you were ignorant of the rules and instructions
will not assist you if you fail to follow them.

2.1 General instructions and guidelines

- a) Do not underestimate this portfolio – **start early** and **submit early**.
- b) Please complete this portfolio examination by writing or typing out your answers to the questions. **You do not have to rewrite/retype the questions**, but please number correctly.
- c) Please include the portfolio **unique number** on the cover page for your portfolio.
- d) You must submit your portfolio online on myUnisa in **PDF format**. Convert your typed document to a PDF document, or scan in your written or typed pages to create one single PDF document.
- e) The **due date** for this portfolio is **23:59 on Monday, 22 October 2018**. If the completed portfolio is not submitted before this time, **a mark of 0% (zero) will be awarded and you will fail the module**. Failure to submit a portfolio on time is viewed in the same light as not showing up on time for a written examination:

likewise, you will be deemed to be absent from the examination and will not be allowed to submit your portfolio late ***under any circumstances***.

- f) **No guidance will be provided** on the content of the study material or on how to approach the questions. Do not contact your lecturers or tutors with questions in this regard. This is an examination.
- g) Answer all the questions.
- h) Read the questions **very** carefully before answering. Where a question asks that you address more than one aspect, each element of the question should be addressed in your answer.
- i) Where a question asks that you answer in your **own words**, please do so. Failure to paraphrase the information found in the study material constitutes **plagiarism**.
- j) **Only make use of the information contained in the HFL1501 tutorial letters** (101, 501, 201 and 202), as well as in **the Constitution**, when answering the questions – do not use **any** other sources. You are not required to do legal research in this module – you are only required to illustrate that you have mastered the prescribed study material. **No marks will be awarded** for answers obtained from any source other than Tutorial Letter 501 or the Constitution.
- k) Where questions refer to case law, legislation or academic articles, **you are not required to find and read these legal sources**. You only need to know what is already explained in the Tutorial Letter 501.
- l) Where you refer to information found in either the Constitution, or in Tut Letter 501, **you have to include references in the form of footnotes**. These footnotes must adhere to the prescribed referencing style of the School of Law. In this regard, please read paragraph 8 (pp 48-52) in the LLBALLF/301/4/2018 tutorial letter. Remember that a Unisa study guide or Tutorial Letter 501 is referenced the same as a book. Please include references in your portfolio, even when you are only referring to the study material and the Constitution.
- m) Before answering Question 13, please read paragraph 5.5.7 (pp 38-41) in the LLBALLF/301/4/2018 tutorial letter. This explains how to approach, formulate and present an **essay**.
- n) In order to ensure that your portfolio is in line with the School of Law's **prescribed formal requirements** for written work, please read paragraph 6 (pp 41-42) in the LLBALLF/301/4/2018 tutorial letter.
- o) Please read paragraph 7 (pp 46-47) in the LLBALLF/301/4/2018 tutorial letter, as well as part 4 of this tutorial letter below, in order to familiarise yourself with **what constitutes plagiarism**, as well as how to avoid it. Please note that you will lose marks if your answers indicate copying, plagiarism or collaboration with other parties. Also, if plagiarism is suspected, your case may be referred for possible disciplinary proceedings. Read again paragraph 1.7 above.
- p) Each page of your portfolio must contain your full name(s) and student number.

- q) **Keep a copy** of your portfolio.
- r) Keep in mind that it is **your responsibility** to submit the correct document, and in the correct file format, before the deadline for the portfolio. You are in charge of your own learning and your own examinations. **No excuses will be accepted for failure to submit on time.**
- s) Please follow the submission guidelines to the letter. Once you have submitted your portfolio exam **you will not be able to go back** and **VIEW** the document. This is because a portfolio is an examination and different procedures apply. It is, therefore, of the utmost importance that you make sure that you submit the correct document.
- t) Once you have submitted your portfolio and it has been sent to a marker for marking, you will not be able to replace it with another document via the RESUBMIT tool. Please note that when the RESUBMIT option is no longer available to you on myUnisa, you cannot resubmit and your lecturers are not in a position to change this. Therefore, please make sure that you submit the correct document.

2.2 What to include with your submission

IMPORTANT!

Please include the following in your portfolio:

- a) Cover page, containing your personal information, as well as that of the module.
- b) Marking rubric, after your answer to the final question. An MS Word version of the marking rubric will be made available on the module's myUnisa page under "Additional Resources". You may also type or write out the marking rubric.
- c) Bibliography, after the marking rubric.
- d) Completed academic-honesty declaration, after the Bibliography. It is also acceptable to provide your ID number or passport number instead of your signature. An MS Word version of the declaration will be made available on the module's myUnisa page under "Additional Resources". You may also type or write out the declaration.

2.3 Instructions for submitting your portfolio via the myUnisa platform

Portfolios may only be submitted online; lecturers cannot and will not accept portfolios submitted via email, fax or in any other format. The myUnisa system will **close at 23:59 on the due date. After midnight on the due date you will no longer be able to submit your portfolio.** If you cannot submit your portfolio in time, due to health

reasons or any of the circumstances listed in the UNISA exam policy, you will have to officially apply for an aegrotat examination at the Department at Examinations – this aegrotat exam will take place in May 2019. As with all other exams, we cannot make any exceptions.

For more information regarding online submissions, please see the **Studies @ Unisa 2018 brochure**, as well as the instructions available on this module's myUnisa page under the link "**Additional Resources**".

To submit on myUnisa:

- a) Go to the module site for HFL1501, click on the link for "Assessment Info". At the bottom of the page you will find the link to submit the document under the heading "Unisa summative assessment". Make sure to submit the document by clicking on the **correct** link. Thereafter, please follow the onscreen instructions.
- b) **DO NOT submit the portfolio under a link for another module and do not submit another module's assessment for this module.** You will be awarded a mark of 0% (ZERO) if you submit the wrong document. ***Please be very careful that you select the correct document to upload.*** In the past, several students submitted the wrong document and they were all awarded a mark of 0%, which means that they have to repeat the module. No resubmissions are allowed and no exceptions are made in this regard.
- c) **BEFORE** submitting, make sure that you submit the **correct document**, containing **all** the pages you wish to submit. You will not be able to return to the "Assessment Info" page to "VIEW" your submission, since this is an examination. This is how the myUnisa system works and your lecturers have no control over this process.
- d) **Important:** Please do not wait until the last minute to submit. The system may be down and you will fail your examination if you are unable to submit in time.
- e) **NO LATE SUBMISSIONS WILL BE ACCEPTED** since this assessment counts as your examination for this module. **We advise you to submit your completed portfolio as early as possible. We suggest that you attempt to submit your portfolio at least THREE DAYS before the deadline.** That way you will have sufficient time to resolve any potential technical problems you may be experiencing. Please see paragraph 2.4 below.
- f) You must submit your examination answers as a single document in **PDF format**. Please take note of the following:
 - The document may not be submitted as an encrypted pdf document or as a file with security restrictions under the "protect/secure document" option. This also means that you may not submit a password-protected file. Security restrictions interfere with the electronic marking program used.

- Do not include an electronic signature in the document as this too affects the online marking.
- Do not submit a “read-only” document, as this does not allow us to make any changes to the document. This means we cannot mark it.
- Do not submit your study guide, tutorial letter, ID document, application form, bank statement, assessment for another module, or any other irrelevant document as your portfolio submission. If we see that you have submitted an incorrect document, we will not contact you to ask that you resubmit, since this is against UNISA’s Assessment Policy. **We mark what we receive and if the submission does not answer the questions, a mark of zero will be awarded.**
- Do not submit a document in corrupt file format; you will be awarded a mark of 0%. This applies whether you corrupted the document purposefully or accidentally. If we see that a student has submitted a corrupt document, we will not contact you to ask that you resubmit, since this is against UNISA’s Assessment Policy. **We mark what we receive.**
- Do not take pictures of your hand-written or printed pages with your smart phone and use an app to convert these photos into a pdf document. The quality of these photos may interfere with the marking of the document. If the marker cannot read the information contained on the page, it cannot be marked.

We wish you good luck with this portfolio examination.

Start early, read all the instructions, DO NOT plagiarise and submit early.

2.4 Technical problems

All queries regarding problems with myUnisa, Unisa emails, or online submission of assignments should be directed to:

myUnisaHelp@unisa.ac.za;
myLifeHelp@unisa.ac.za; or
assign@unisa.ac.za.

Your lecturers CANNOT assist you with these matters.

3 PORTFOLIO QUESTIONS

HFL1501: Portfolio examination October/November 2018

First examiner: Ms A Bauling

Second examiner: Ms L Wildenboer

PART 1 (20 marks)

The origins of South African law

Answer the following questions by making use only of the study material in Part 1 of Tutorial Letter 501:

QUESTION 1

Read the following two statements regarding the constitutional development of indigenous law and determine whether each one is true or false. Write only the correct option as your answer (eg, "1.3 True"):

- 1.1 In *Bhe and others v Magistrate, Khayelitsha and others; Shibi v Sithole and others; SA Human Rights Commission and another v President of the Republic of South Africa and another* 2005 (1) BCLR 1 (CC), the Court found that the rule of male primogeniture, as it applied in the indigenous law of succession, is unconstitutional. This decision led to the promulgation of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009. (1)
- 1.2 The Special Courts for Blacks Abolition Act 34 of 1986 abolished a number of the separate courts for blacks because these courts were found to be repugnant to the values set out in the Constitution and because they were a reminder of "past divisions and discrimination". (1)

[2]

QUESTION 2

Indicate whether each of the following two statements with regard to the decision in *Daniels v Campbell* 2004 (7) BCLR 735 (CC) regarding the recognition and application of Islamic law is true or false. Write only the correct option (eg, “2.3 True”):

- 2.1 The Court held that the natural interpretation of the word “spouse” in the Intestate Succession Act 81 of 1987 and in the Maintenance of Surviving Spouses Act 27 of 1990 should include both spouses in any Muslim marriage. (1)
- 2.2 As a result of this decision, the South African Law Reform Commission proposed a draft Bill for the Recognition of Islamic Marriages and recommended that polygynous Muslim marriages be recognised. (1)

[2]**QUESTION 3**

Answer the following questions regarding the old writers on Roman-Dutch law:

- 3.1 The work of which old writer formed the basis of the law of the *Zuid-Afrikaansche Republiek* and was an authoritative source of the law of the Republic of the Orange Free State? (1)
- 3.2 The works of which 17th-century old writers were regarded as sources of law in both Boer republics? (2)

[3]**QUESTION 4**

Read the following statements regarding legal development in South Africa after unification in 1910. Analyse the statements below and indicate whether each one is true or false. Motivate your answer in each instance:

- 4.1 After the establishment of one Supreme Court for South Africa in 1910, judges began to believe in the importance of retaining a pure Roman-Dutch law and rejected the application of English law. (2)
- 4.2 In *Linvestment CC v Hammersley and Another* 2008 JDR 190 (SCA) the Supreme Court of Appeal observed that it was necessary to preserve our Roman-Dutch heritage by applying pure 17th-century Roman-Dutch law and rejecting the influence of other legal systems. (3)

[5]

QUESTION 5

- 5.1 What is meant by the full testing capacity of the courts? (1)
- 5.2 Name one Constitutional Court decision of which you have learned in Part 1 of this module, where the Court exercised this testing capacity. Also explain the reason for the Court's decision. (3)

[4]

QUESTION 6

From a legal perspective, why was it possible for the Legislature to promulgate unjust laws aimed at keeping blacks in a position of social, political and economic subordination during the 1980s? (4)

[4]

TOTAL PART 1: [20]

PART 2 (55 marks)

Historical foundations and development of the law of property and obligations

QUESTION 7

How does transformative constitutionalism guide the transformation of South African society? (2)

[2]

QUESTION 8

- 8.1 Briefly explain what a personal right is and provide one example of such a right. (2)
- 8.2 Answer the following multiple-choice questions by writing down only the correct number (eg, "(d) 4"):
- (a) Read the following statements and determine whether each one is true or false:

- A The owner of a thing can also be in possession of that thing.
B To possess a thing means that one is the owner of that thing.

Choose your answer from one of the following options:

- (1) Both statements are true.
(2) Both statements are false.
(3) Statement A is true, but statement B is false.
(4) Statement B is true, but statement A is false. (2)

(b) Read the following statements and determine whether each one is true or false:

- A Under Roman law, slaves were considered legal subjects.
 B Today, both international and national law regulate the trade in human beings.

Choose your answer from one of the following options:

- (1) Both statements are true.
 (2) Both statements are false.
 (3) Statement A is true, but statement B is false.
 (4) Statement B is true, but statement A is false. (2)

(c) Read the following statements and determine whether each one is true or false:

- A An owner of a thing has specific rights to that thing, because he is the owner thereof. However, these rights may be restricted by provisions of law and the rights of others.
 B Provisions in the Constitution may impose certain restrictions on an individual's right of ownership.

Choose your answer from one of the following options:

- (1) Both statements are true.
 (2) Both statements are false.
 (3) Statement A is true, but statement B is false.
 (4) Statement B is true, but statement A is false. (2)

8.3 Identify the mode of delivery used by the parties in each of the following scenarios:

- (a) Bertha leases a house from Kate. One year later Bertha still lives in the house when Kate puts it on the market. Bertha buys the house from Kate. (1)
 (b) Frikkie sells his farm implements to John, but they agree that Frikkie will lease the farm implements from John for two weeks after the sales agreement has been finalised. (1)
 (c) Thulelo buys a dairy farm from Moithisi. The details of the transaction are put into writing and the document is delivered to Thulelo. (1)

8.4 Name two pieces of South African legislation that apply to a bond agreement (home loan). (2)

8.5 Both the cases of *Occupiers of Erven 87 & 88 Berea v Christiaan Frederick De Wet NO* [2017] ZACC 18 and *Baron and others v Claytile (Pty) Ltd and another* [2017] ZACC 24, were decided by the Constitutional Court in 2017. These cases concern the rights of unlawful occupiers. Write one paragraph, in your own words (no longer than 250 words), in which you compare the outcomes of these cases. Explain, why the Constitutional Court came to the conclusions it did by discussing the facts the Court considered in each case. Also explain whether you agree with the decisions in both cases. (5)

QUESTION 9

9.1 Study the following scenarios carefully and answer the questions that follow:

9.1.1 Thandi sees her dream car in the window of a dealership. She saves up and comes back six months later to purchase the car. She is under the impression that she is buying the car from a man named Raymond, when in fact the dealer's name is Rhulani.

(a) Which factor in this transaction may influence consensus between Rhulani and Thandi? (1)

(b) What influence does this factor have on the agreement between Rhulani and Thandi? (1)

9.1.2 Felix and Abraham concluded a contract. Felix was under the impression that he was letting his wagon to Abraham, whereas Abraham thought that he was concluding a contract of loan for use with Felix.

(a) Which factor in this transaction may influence the consensus between Felix and Abraham? (1)

(b) What influence does this factor have on the agreement between Felix and Abraham? (1)

9.2 In each of the following instances the debtor is not able to deliver in terms of the contract. In each instance, identify whether this is a result of impossibility of performance or supervening impossibility of performance:

(a) Sipho and Jan-Hendrik agree that Sipho will sell his Ferrari to Jan-Hendrik for R1.5 million. They agree that payment of the purchase price and delivery of the vehicle will take place on 1 November 2018. On 27 October 2018 Sipho's house and adjoining garage burns down as a result of a wildfire. The Ferrari is damaged irreparably. (1)

(b) Thabang walks along a crowded beach during the school holidays. He is trying to sell his hand-made jewellery to the beach-goers. He finds an interested buyer in Sbu. He is looking to buy his wife a necklace. Sbu decides to buy the only necklace Thabang has with him on that day. Just as Sbu stretches out his hand to give the necklace to Sbu, a freak wave washes onto the beach. Both Thabang and Sbu lose their footing and fall down in the shallow water. The necklace falls from Thabang's hand and gets pulled into the ocean by the receding wave. Both men go into the water, trying to find it, but the necklace is never found. (1)

9.2 Identify the correct statement. Write only the correct option as your answer (eg, (c) "suspensive term").

(a) Josi agrees that Pula may lease her house until the end of March next year. This agreement contains a _____: (1)

- (i) Suspensive term.
- (ii) Suspensive condition.
- (iii) Resolutive term.
- (iv) Resolutive condition.

- (b) Complete the following statement by writing only the correct option as your answer (eg, 1 (a) “suspensive term”). Kedibone agrees that Sarah may lease her house if Kedibone is offered employment by the travelling circus that passes through town each year. This agreement contains a _____: (1)

- (i) Suspensive term.
- (ii) Suspensive condition.
- (iii) Resolutive term.
- (iv) Resolutive condition.

- 9.3 Indicate whether the following statements are true or false: Write only the correct option as your answer (eg, “(d) True”):

- (a) Contracts that came about after the parties had come to an agreement and the thing had been delivered, are known as *contractus re*. (1)
- (b) If a party in terms of a contract was paid for his services, such a contract cannot be classified as a real contract. (1)
- (c) A loan for consumption (*mutuum*) is a bilateral contract. (1)

- 9.4. Read the following multiple-choice question. Choose one statement as your answer. Write only the correct number as your answer (eg, “9.4.3. (1)”):

- 9.4.1 Which one of the following statements is correct with regard to good faith in South African law of contract? (2)

- (1) Professor Jaco Barnard advocates for a freedom of contract that is exercised in good faith.
- (2) According to Judge Dennis Davis, the Constitution may be regarded as the source of the *boni mores* and the principles of good faith.
- (3) In *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* the Constitutional Court set an important precedent when it stated that the principles of good faith and ubuntu must be incorporated in the law of contract.
- (4) As a result of the Constitutional Court decision in *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd*, a contract against the *boni mores* or the principles of good faith will be voidable.

- 9.4.2 Read the following two statements regarding South African law of contract. Determine whether each one is true or false: (2)

- (A) Freedom of contract cannot be limited by legislation.
- (B) The Consumer Protection Act is a practical example of the effect of transformative constitutionalism.

Choose your answer from one of the following options. Write only the correct number:

- (1) Both statements are true.
- (2) Both statements are false.
- (3) Statement (A) is true, but statement (B) is false.
- (4) Statement (B) is true, but statement (A) is false.

9.5 In your own words, discuss how the Consumer Protection Act 68 of 2008 has developed the common law on the sale of defective goods. Also mention whether you think these developments have benefitted or harmed the consumer. (5)

[20]

QUESTION 10

10.1 Indicate whether the following statements are true or false. Write only the correct option as your answer (eg, "(e) True"):

- (a) In terms of Roman legal principles, theft qualified as a crime. (1)
- (b) As under Roman law, the elements of a delict under modern South African law are conduct, wrongfulness, fault, damage and causality. (1)
- (c) With regard to the conduct element of a delict as applied to the developed *lex Aquilia*, Justinian also regarded an omission as conduct. (1)
- (d) Intent was not a requirement for the commission of *iniuria*. (1)
- (e) In the case of *Loureiro and others v iMvula Quality Protection (Pty) Ltd* [2014] ZACC 4 the Constitutional Court utilised the reasonable-person test to determine whether the delictual element of causality was present on the facts. (1)

10.2 Answer the following questions based on *Le Roux and others v Dey* 2011 (3) SA 274 (CC):

- (a) Name any three fundamental rights that the Constitutional Court took into consideration in its decision in this case. (3)
- (b) What criticism has been levelled against this judgement? (1)
- (c) With reference to this decision and South African law today, write a brief note (no longer than 200 words) on the notion of apology in Roman, Roman-Dutch and indigenous African law. (6)

[15]

PART 3 (20 marks)

The role of the Constitution in South African legal development

QUESTION 11

How do you know that South Africa has a supreme Constitution instead of a supreme parliament? (4)

[4]

QUESTION 12

12.1 Which sections of the Constitution guides the courts when developing the common law or customary law? (2)

12.2 Read the following multiple-choice questions. Choose one statement as your answer. Write only the correct number (eg, "(c) (1)"): (2)

(a) Which one of the following statements regarding Karl Klare's conception of transformative constitutionalism is correct? (2)

- (1) Transformative constitutionalism aims at rapidly transforming socio-political institutions.
- (2) The need for large-scale social and political transformation may justify the use of violence if it is grounded in law
- (3) The essence of constitutional transformation lies in the enactment, interpretation and enforcement of a constitution with a view to effecting socio-political change.
- (4) A transformative constitutionalism project can be implemented where the courts have limited testing capacity.

(b) Bearing in mind what you have learnt about transformative constitutionalism, which one of the following statements is correct? (2)

- (1) Transformative constitutionalism could have been successfully implemented in the Zuid-Afrikaansche Republiek.
- (2) It would not have been possible to implement a project of transformative constitutionalism in the Republiek of the Orange Free State.
- (3) Transformative constitutionalism could have been successfully implemented under the 1983 Constitution of the Republic of South Africa.
- (4) Transformative constitutionalism could not have been successfully implemented under the 1993 Interim Constitution of South Africa.

[6]

QUESTION 13

Write a 300-word essay in which you describe your understanding of the concept of ubuntu, in your own words. Also discuss how ubuntu has influenced the Constitutional Court in its judgements discussed in the study material. Select and discuss one case dealing with each of the following areas of law: the law of property, the law of contract and the law of delict. No marks will be awarded for discussions of cases heard in any other court than the Constitutional court, or cases not discussed in the study material. Please answer in your own words and note that if any plagiarism is detected in your answer, a mark of zero will be awarded for your answer. (10)

[10]

MARKING RUBRIC: Technical aspects of the portfolio examination	
<i>It is possible to obtain one mark for each of the following criteria:</i>	
Presentation neat and according to CLAW Formal Requirements	
Inclusion of completed academic-honesty declaration	
Bibliography	
References included in footnotes	
Footnotes in correct stylistic format. References included according to CLAW Prescribed Style	

Part 1: 20

Part 2: 55

Part 3: 20

Technical aspects: 5

GRAND TOTAL: 100

4 INFORMATION ON PLAGIARISM

PLAGIARISM WARNING

Since this is a portfolio examination, absolutely no plagiarism will be tolerated. ***All information taken from the tutorial letters must be paraphrased (written in your own words).*** If plagiarism is detected, you will be awarded a mark of 0% (ZERO) for the infringing question. Please complete and include the academic-honesty declaration below. You may type or write it out, but you must include it at the end of your portfolio (after the bibliography). You do not have to sign it by hand. By providing your information you will acknowledge that you have read, understood and adhered to the guidelines.

Please complete and include this declaration with your portfolio submission:

ACADEMIC HONESTY DECLARATION

Declaration

1. I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.
2. I declare that this portfolio is my own, original work. Where I have used someone else's work I have indicated this by using the prescribed style of referencing. Every contribution to, and quotation in, this assignment from the work or works of other people has been referenced according to this style.
3. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
4. I did not make use of another student's work and submitted it as my own.
5. I am aware that marks can be deducted for poor/no referencing in this examination.

NAME:

ID NUMBER / PASSPORT NUMBER:

STUDENT NUMBER:

DATE:

PLAGIARISM POLICY OF THE COLLEGE OF LAW

The College of Law is committed to the Unisa ideal of research that is based on integrity, quality and rigour. All work must meet the ideal of academic integrity. Academic integrity can be defined as the meaningful and concerted effort to ensure honesty, trust, fairness, respect and responsibility in research. All research at CLAW, whether a first-year assignment or a doctoral thesis, should be guided by this ideal.

The opposite of academic integrity is academic dishonesty. In line with Unisa's policies, the following activities are forms of academic dishonesty:

- **Copying/cut-and-paste/patch-writing:** This type of dishonesty involves just copying someone else's work either word-for-word or changing it slightly without indicating that it is copied by, for example, putting it in inverted commas or brackets.
- **Absence of references:** This involves using someone else's ideas, thoughts, insights or data without acknowledging that they are not your own.
- **Cheating/falsifying information:** This is the manufacturing of data which does not exist or leaving out contradictory evidence, also sometimes called cherry-picking.
- **Padding:** This refers to the practice of referring to sources that were not consulted, but which makes the footnotes and/or bibliography seem more impressive.
- **Too many quotes:** This form of dishonesty is one where more than 15% of the work consists of quotes.
- **Incorrect referencing:** Incorrect referencing shows a lack of rigour and of disciplinary expertise.
- **Helping someone cheat:** This might range from the innocuous (allowing someone to copy from you) to the more severe (providing someone with the means to cheat). It is the reason why students are not allowed to hand in the same assignment, even if they worked in a group.

Quotations and paraphrasing

- Quotations
 - When you quote the exact words of an author, always do the following:
 - Use inverted commas (") directly before and after the quoted text
 - Acknowledge the source of the quotation in line with the referencing method prescribed by your department or subject field
 - Treat a translated quotation in the same way. At the end of the translated text, add the following: [own translation]

- Paraphrasing

This is when you make use of someone else's ideas, but put them into your own words, and according to your personal style of writing. Generally, it is better to paraphrase than to quote.

The following needs to be remembered when paraphrasing:

- Ensure that you formulate others' ideas in such a way that it blends in nicely with your own writing style
- Do not misrepresent the other person's ideas in order to suit your purposes
- As with quotations, acknowledge the source of your ideas using the prescribed referencing method

What is Turnitin?

Turnitin is a software programme that is able to detect plagiarism in different types of electronic documents. Unisa subscribes to this programme, and incidences of plagiarism will be followed up on by the Student Disciplinary Committee.

Finding out more about plagiarism

The following resources are useful for obtaining more information about plagiarism:

- <http://www.plagiarism.org>
This is an educational website from iParadigms LLC, makers of Turnitin plagiarism detection software.
- <http://www.unisa.ac.za/plagiarism>
This document contains guidelines from the Unisa Library on how to avoid plagiarism.
- <http://www.web-miner.com/plagiarism>
This plagiarism site was created by Sharon Stoerger, MLS, MBA, and contains links to various resources on plagiarism, including articles, case studies, etc.
- <http://www.doccop.com>
DOC Cop is a plagiarism, cryptomesia and collusion detection tool that creates reports displaying the correlation and matches between documents or a document and the web.
- <http://www.turnitin.com>
This is the Turnitin website, and contains useful information about this plagiarism detection tool, which Unisa uses.

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Be wise....

Don't plagiarise!



What is plagiarism?

Plagiarism is when you present another person's ideas as your own, without properly acknowledging the source of the ideas. It is regarded as a criminal offence.

You need to guard against plagiarism when dealing with the following types of material:

- **Written:** This includes books, articles, theses or dissertations, newspapers, magazines, notes, course material, e-mail messages, data, information on the Internet, etc. Plagiarism applies regardless of whether the material is published or unpublished.
- **Visual:** This includes fine or graphic art, photographs, pictures, etc.
- **Multimedia:** This includes websites, videos, films, CDs and DVDs, etc.
- **Music:** This includes musical compositions, song lyrics, CDs, music or audio clips on the Internet, etc.
- **Spoken text:** This includes speeches, lectures, interviews, etc.

What will happen to me if I plagiarise?

• Legal consequences:

In terms of the Copyright Act 98 of 1978, plagiarism may be viewed as a criminal offence. If you are found guilty of plagiarism, the following could happen:

- You may be expelled from the university
- You may be fined or imprisoned by a court of law

• Moral or ethical consequences:

- Plagiarism is a dishonest practice, similar to theft
- It shows disrespect for the rights and efforts of the original author
- It damages Unisa's reputation, and significantly decreases the value of your qualification
- Ultimately, plagiarism casts doubt on the integrity of other students' work

How to avoid plagiarism

Here are a few tips for ensuring that you do not plagiarise:

- **Whenever you use a fact, phrase, chart or quotation from someone else in your work, you must acknowledge the original source**
- **Keep careful notes of every source you consult when working on a paper (or thesis/dissertation), so that no sources are used without proper acknowledgement**
- **Never copy and paste anything from the Internet without also copying the URL where you found it, so that you can provide a full citation for this source**
- **Do not use the work of fellow students**
- **Do not intentionally commit plagiarism**
- **Train yourself to think independently and critically**

Do not become overly dependent on the ideas and work of others:

- **Learn as much as possible about the correct method of referencing (as specified by your lecturer or supervisor), and apply it consistently in your work**

