

COLLEGE OF LAW

SCHOOL OF LAW: DEPARTMENT OF JURISPRUDENCE

INTRODUCTION TO LAW
(ILW1036)

Tutorial Letter 103/2009

FINAL TUTORIAL LETTER FOR ILW1036

Dear Student

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

- 1 LECTURERS FOR 2009**
- 2 STUDY MATERIAL FOR ILW1036**
- 3 ASSIGNMENTS AND ADMISSION TO THE EXAMINATION**
- 4 COMMENTARY ON ASSIGNMENT 01**
- 5 COMMENTARY ON ASSIGNMENT 02**
- 6 A WARNING!!**
- 7 QUESTIONNAIRE**

1 LECTURERS FOR 2009

Your lecturers for 2009 are:

Mrs A Jacobs (Module leader)

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Office: Cas van Vuuren Building, Office 4-101

Mr FM Mahlobogwane

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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 ILW1036**. You can **phone** us during the mornings, **make an appointment to come and see us personally**, write a **letter** or send an **e-mail**.

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 STUDY MATERIAL FOR ILW1036

The complete study package for ILW1036 consists of:

- **Tutorial Letter 501/2009** - The "study guide" for ILW1036
- **A DVD** - "The laws of our lives"
- **Tutorial letters**
 - Tutorial Letter 101/2009 - General information regarding the University and the module ILW1036; Assignments 01, 02 and 03 (the first tutorial letter which you should have received by now)
 - Tutorial Letter 102/2009 - Lecturers for 2009; study material for ILW1036; a correction in Tutorial Letter 101/2009; assignments and admission to the examination; the examination; how to complete a mark-reading sheet in the examination (the second tutorial letter which you should have received by now)

Tutorial Letter 103/2009 - Lecturers for 2009; study material for ILW1036; assignments and admission to the examination; commentary on Assignment 01; commentary on Assignment 02; a warning; questionnaire (this tutorial letter)

PLEASE NOTE: There is **no prescribed textbook for ILW1036**. 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 Tutorial Letter 501/2009 (the "study guide" for ILW1036) and the other tutorial letters that you receive.**

ALSO NOTE: The Department of Despatch should supply you with the above-mentioned study material for ILW1036.

3 ASSIGNMENTS AND ADMISSION TO THE EXAMINATION

Please ignore the information regarding assignments and admission to the examination in **8.1** on pages 9 and 10 of Tutorial Letter 101, as well as in **4** on page 3 of Tutorial Letter 102.

Unisa had urgent meetings with the South African Post Office to address the problem of a backlog in the distribution of study material to Unisa students. Due to the backlog, students did not receive their study material in time to submit the first assignment for the modules that they registered for.

Students were required to submit the first assignment for each module that they registered for, by 27 February 2009, before they would be allowed to write the examination for that module. In order to address this problem, the assignment submission dates at Unisa had to be adapted. The submission date of the first assignment of all modules was postponed to 20 March 2009. Consequently, the submission dates of both Assignment 01 and Assignment 02 for ILW1036 were on 20 March 2009.

All assignments that reached Unisa by 20 March 2009 were assessed and returned to students. Assignments received after 20 March 2009 did not count for admission to the examinations.

Students who submitted any one assignment of a module by 20 March 2009 were admitted to the examination. Thus, if students submitted one assignment, or both assignments, for ILW1036 by 20 March 2009, they obtained admission for the examination.

All assignments which were submitted for ILW1036, will still be taken into account for calculating the semester mark for ILW1036, as explained in Tutorial Letter 101, page 10, 8.2.

Students are again reminded that all study material is available on *myUnisa*.

4 COMMENTARY ON ASSIGNMENT 01

By now you should have received a computer printout providing you with your answers, the correct answers and your mark for Assignment 01, a multiple-choice question assignment for ILW1036. A detailed commentary on each question of the assignment follows. Please compare your answers to the answers in the commentary in order to see where you have made your mistakes. Remember, this assignment is based on Study units 1 to 6 of Tutorial Letter 501.

Question 1

Statement (4) is not an example of a "legal norm". The prohibition of adultery is *not* an example of a "legal norm". However, the prohibition of murder, the prohibition of theft and the prohibition of rape are all examples of a "legal norm". (See Study unit 1, p 9.)

Question 2

Statements (1), (2) and (4) are clearly incorrect.

If statement (1) is used to complete the sentence, the sentence is *not* a description of material law, but rather a description of one of the general purposes of law. (See Study unit 1, p 19; Study unit 9, p 154.)

Statement (2) cannot be used to complete the sentence because then the sentence does not make any sense, and is definitely *not* a description of material law. (See Study unit 1, pp 17-19.)

Statement (4) cannot be used to complete the sentence because this statement is also *not* a description of material law. (See Study unit 1, pp 17-19.)

Therefore, statement (3) is correct. If statement (3) is used to complete the sentence, the sentence indeed makes sense and provides a description of material law. *Material law can be described as that part of the law which determines the content and meaning of legal rules.* Remember, material law is also known as substantive law. (See Study unit 1, p 18.)

Important note: Make sure that you are able to distinguish between formal law and material or substantive law, as well as between formal justice and substantive justice. You will find the distinction between these different terms in Study unit 1, pages 17 to 19.

Question 3

Statement (1) cannot be used to complete the sentence. The term "law" refers to the whole system of legal rules in South Africa, *not* the term "rights". (See Study unit 1, pp 7-9; Study unit 2, pp 20-21.)

Statement (2) cannot be used to complete the sentence. The term "rights" does *not* refer to only those rights contained in the Bill of Rights. You will notice that we refer to a system of rights in Study unit 2, in other words different kinds of rights that a person has according to law. (See Study unit 2, pp 20-26. See especially p 21.)

Statement (3) can also not be used to complete the sentence. Let us explain why: The term "rights" does indeed concern the relationships between legal subjects, *but* does *not only* concern the relationships between legal subjects. Remember, a right concerns a twofold relationship. The term "rights" therefore also concerns the relationships between legal subjects and legal objects. Since statement (3) states that the term "rights" *only* concerns the relationships between legal subjects, it excludes the relationships between legal subjects and legal objects and is therefore incorrect. (See Study unit 2, pp 20-21.)

Thus, statement (4) is the most correct statement which can be used to complete the sentence. In South African law the term "rights" refers to the rights that legal subjects can have over legal objects. (See Study unit 2, p 21.)

Question 4

Statement (2) is clearly correct. David's right to payment is called a *personal right*. In law it is also called a claim. (See Study unit 2, pp 22-23. See especially (4) on p 23.)

Question 5

Statements (1) and (3) are clearly not the answers to this question. Both these options are incorrect since neither Augustus nor Constantine was the author of the *Corpus Iuris Civilis*.

Statement (2) is also not the answer to the question. This option is incorrect because Justinian was also *not* the *author* of the *Corpus Iuris Civilis*. He *himself* did *not* write the *Corpus Iuris Civilis* in its entirety. He merely decided that the Roman law should be codified. That meant that all the earlier writings of the classical jurists and all the laws passed by all the emperors, in other words sources of Roman law that already existed, were to be collected and written down as a code, the *Corpus Iuris Civilis*. (See Study unit 3, p 32.)

Since statements (1), (2) and (3) are all incorrect, statement (4) is the most correct statement and therefore the option that you had to choose.

Question 6

Statement (1) is a characteristic of indigenous law and is therefore correct. Indigenous law is made up of unwritten customs that are passed on orally from generation to generation. (See Study unit 6, pp 70-71.)

Statement (2) is a characteristic of indigenous law and is therefore correct. Indigenous law is a communal or group orientated legal system, in contrast with the more individualistically orientated Western law. (See Study unit 3, pp 34-35.)

Statement (3) is a characteristic of indigenous law and is therefore correct. Indigenous law mainly regulates the relationships between individuals, and not relationships between individuals and the state. (See Study unit 3, pp 34-35.)

Statement (4) is not a characteristic of indigenous law and is therefore the incorrect statement that you had to choose. Indigenous law *does indeed differ* on a tribal and territorial basis. There are still different black tribes in South Africa who live according to their own laws and cultures. (See Study unit 3, p 34.)

Question 7

Statement (1) is the correct answer to the question and therefore the statement that you had to choose. Roman law is *not* a component of our hybrid South African legal family.

Statements (2), (3) and (4) are clearly not the correct answers to the question since Roman-Dutch law, English law and Indigenous law are indeed the three components of our hybrid South African legal family. (See Study unit 4, pp 40-41 and pp 42-43.)

Important note: When you had to answer this question, you only needed to consult Study unit 4. Although we do include Roman law as part of our legal history in the discussion and the diagram in Study unit 3, Roman law itself did not really have a direct influence on the development of the South African legal system. However, Roman law definitely had an indirect influence through the use of Roman-Dutch legal principles. Remember, centuries ago the Roman law was received into the Dutch law. Sometimes, when Dutch jurists could not find a solution for a legal problem in Dutch law, they used or adapted Roman-law principles to find a solution to the problem. This is how the Roman-Dutch law developed. It is this Roman-Dutch law that came to South Africa with Jan van Riebeeck in 1652, and became one of the components of our hybrid South African legal family.

Question 8

Statement (3) is clearly the correct answer to the question. The division of law that Mr Dingaen will have to consult in order to advise his client is private law, more specifically, the law of delict. (See Study unit 5, p 47.)

Question 9

Statement (3) is without doubt the correct statement. "Statutory law" is also called "legislation". (See Study unit 6, p 68.)

Question 10

Statements (1) and (2) are incorrect. Decisions by magistrates' courts are not followed by higher courts since magistrates' courts are regarded as lower courts. (See Study unit 6, pp 72-73.)

Statement (3) is correct. The decision of the Supreme Court of Appeal will be binding on all High Courts and lower courts and will therefore have to be followed. (See Study unit 6, pp 72-73.)

Statement (4) is incorrect. The decision of the High Court in Pretoria will not be binding, since there is a case decided by the Supreme Court of Appeal. (See Study unit 6, pp 72-73.)

5 COMMENTARY ON ASSIGNMENT 02

By now you should also have received a computer printout providing you with your answers, the correct answers and your mark for Assignment 02, a multiple-choice question assignment for ILW1036. A detailed commentary on each question of the assignment follows. Please compare your answers to the answers in the commentary in order to see where you have made your mistakes. Remember, this assignment is based on Study units 7 to 12 of Tutorial Letter 501.

Question 1

Statements (1), (2) and (4) are correct. All these statements can be regarded as descriptions of a constitution. (See Study unit 7, p 120.)

Statement (3) is clearly incorrect and therefore the statement that is the odd one out . A constitution is not a codification of the law of a democratic country. Do you still remember what "codification of the law" means? If not, read pages 67 and 68 of Study unit 6 again.

Question 2

Since statements (a), (b), (c) and (d) all represent main features of the 1993 Constitution, **option (4) is correct and therefore the option that you had to choose.** (See Study unit 7, pp 121-123.)

Important note: If you have read Study unit 7, page 121, paragraph two, you must have realised that the interim Constitution of 1993 was the predecessor of the final Constitution of 1996. Therefore, the principles of democracy of the 1993 Constitution must have been included in the 1996 Constitution.

Question 3

Statement (a) is incorrect. "*Supremacy of the Constitution*" does not mean that the Constitution replaces all law that are inconsistent with it. (All legal sources referred to in Study unit 6 still exist.) It is more correct to say that the Constitution prescribes standards which must be followed in order to make all law consistent with it. All law may be challenged in terms of the Constitution in a court of law. If any law is found to be inconsistent with the Constitution, a specific process must be followed to change or abolish it. (See Study unit 7, pp 122-123.)

Statement (b) is correct. "Supremacy of the Constitution" means that the Constitution prescribes standards which must be followed in order to make all law consistent with it. (See Study unit 7, pp 122-123.)

Since statement (a) is incorrect and statement (b) is correct, option (4) is the correct option and therefore the option that you had to choose.

Question 4

Statement (1) is clearly the correct answer to the question. In this case a court convicted Peter Brown of a crime (fraud) and sentenced him to seven years imprisonment. Since the court had to decide a legal dispute, the judiciary or judicial authority of the state (which is responsible for deciding legal disputes) is the branch of government which is applicable in this case. (See Study unit 7, p 122.)

Question 5

Statement (1) is correct. The right to human dignity is an example of a first-generation right. (See Study unit 8, p 128.)

Statement (2) is incorrect. First-generation rights, *not* second-generation rights, protect the individual from the abuse of state power. (See Study unit 8, pp 128-129.)

Statement (3) is incorrect. Second-generation rights are known as "red rights", *not* as "green rights". (See Study unit 8, pp 128-129.)

Statement (4) is incorrect. Third-generation rights do *not* enjoy the most protection in the Constitution. It is incorrect to say that one of the categories of fundamental rights enjoys more protection than the others. When one fundamental right is in direct conflict with another fundamental right (it does not matter to which category the rights belong), a *court* will probably decide this kind of dispute by defining the scope of each right and by weighing the rights up against each other. In such a dispute the balancing of different interests is very important. (See Study unit 8, p 129; Study unit 9, pp 151-153.)

Question 6

You had to choose (1) since this statement is true. The law that limits a fundamental right must be of general application. (See Study unit 9, p 152.)

Question 7

You had to choose (3) since this statement is the correct answer to the question. From this incident, *both a criminal case and a civil case* might arise. The state can institute a criminal case against Peter because Peter assaulted John. John can institute a civil case against Peter to claim his medical expenses from Peter. (See the DVD or Study unit 10.)

Question 8

Statements (1), (2) and (3) are correct. (See Study unit 11, p 186.)

Statement (4) is incorrect. In a criminal case the parties are always the state and the accused, *not* the plaintiff and the defendant. (See Study unit 11, p 186.)

Question 9

Statement (4) is clearly the **correct option** which must be used to complete the sentence correctly. *The presiding officer in a lower court is known as a magistrate.* (See Study unit 12, p 190.)

Question 10

Remark (a) is incorrect. In a criminal case the accused may be defended by *either* an advocate or an attorney, since attorneys may now appear in both magistrates' courts and High Courts.

Remark (b) is also incorrect. In a civil case the plaintiff or defendant, *not* the accused, may be defended by *either* an advocate or an attorney, since attorneys may now appear in both magistrates' courts and High Courts.

Since both statements (a) and (b) are incorrect, option (2) is the correct option and therefore the option that you had to choose.

(See Study unit 11, pp 186-187; Study unit 12, p 189. Also see Study unit 12, p 189 for a brief discussion of the Right of Appearance Act 1995, in terms of which attorneys may apply for a right to appear in the High Court.)

6 A WARNING!!

Students usually do well in 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 year mark, it does not necessarily mean that you will obtain a good mark in the examination. Do not allow a good year mark to create a false impression that you already know the study material for ILW1036 for examination purposes.

Remember, the examination is very different! In the examination paper different kinds of questions are asked; not only multiple-choice questions (see in this regard Tutorial Letter 102/2009 which you have received). 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 your study material with you. Thus, for the examination you have to study the study material for ILW1036 thoroughly.

You are welcome to contact us should you have any further questions regarding the assignments, the commentaries 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 on the Unisa main campus.

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

Yours sincerely

MRS A JACOBS (MODULE LEADER)
MR FM MAHLOBOGWANE

PRETORIA

7 QUESTIONNAIRE

Dear ILW1036 Student

Introduction to Law, with the module code ILW1036, is a module which was offered for the first time in 2008. We would like to know what you, our students, think about the module in order to revise the contents of the study material and also to adapt our teaching accordingly. The purpose of the questionnaire is thus to obtain feedback from you concerning your learning experience in this module. **Thank you for taking the time to complete the questionnaire. We appreciate your feedback!**

Please follow the following instructions when you complete and return the questionnaire:

1 Please complete and return this questionnaire to us when you have worked through the study package for ILW1036, in other words before the end of the semester.

2 If you want to complete the questionnaire and send it to us via *myUnisa*, click on "Official Study Material". You will notice that the questionnaire has been loaded as a Word document, titled Tutorial Letters 104(E) for ILW1036. Save the document on your computer, complete the questionnaire and send it back to Mr Mahlobogwane at mahlofm@unisa.ac.za.

3 For those students who are not *myUnisa* users, the questionnaire appears at the end of Tutorial Letter 103/2009 (this tutorial letter). You can therefore also return the completed questionnaire to us by post. **Kindly cut out the questionnaire once you have completed it and return it to us.**

4 Very important!!! Complete the questionnaire on *myUnisa* or return the questionnaire that appears at the end of Tutorial Letter 103 by post. We do not want to receive two completed copies of the questionnaire from each ILW1036 student.

5 If you return the completed questionnaire to us by post, please send it to the address provided below. Make sure that you write the correct information on the envelope. You may use one of the brown or white Unisa envelopes to return the questionnaire to us by post.

Mr FM Mahlobogwane
Department of Jurisprudence: ILW1036
P O Box 392
Unisa
0003

6 In the case of some of the questions you are expected to answer "Yes" or "No". Please mark the answer that you choose with an "X" directly next to the "Yes" or the "No".



QUESTIONNAIRE:

1 Your student number: _____

2 Your age in years: _____

3 What is your mother tongue? _____

4 How did you experience the study package for *Introduction to Law (ILW1036)* in its entirety (in other words, TL501/2009 or the "study guide", the three other tutorial letters and the DVD "The laws of our lives")?

4.1 Liked the layout of the study material Yes No

4.2 User friendly Yes No

4.3 Language accessible Yes No

4.4 Easy to understand Yes No

4.5 Interesting Yes No

4.6 Relevant Yes No

4.7 Do you have any further comments regarding your answers to the aspects mentioned above?

5 Questions with regard to the study units in Tutorial 501/2009 or the "study guide"

5.1 Which study unit(s) did you find easy? Give reason(s) for your answer.

5.2 Which study unit(s) did you find difficult? Give reason(s) for your answer.

5.3 Which study unit(s) did you find especially relevant and useful? Give reason(s) for your answer.

5.4 Which study unit(s) did you find irrelevant? Give reason(s) for your answer.

5.5 Which study unit(s) did you enjoy? Give reason(s) for your answer.

6.7 Did you find the activities unnecessary and boring? Give reason(s) for your answer.

6.8 Did you find the feedback which followed the activities helpful and sufficient? Give reason(s) for your answer.

7 Questions with regard to Tutorial Letters 101/2009, 102/2009 en 103/2009

7.1 Did you thoroughly read through the three tutorial letters mentioned above?

Yes

No

7.2 Give reason(s) for your answer in 7.1.

8 Questions with regard to the assignments

8.1 Did you do the assignments on your own without consulting the study material?

Yes No

8.2 Did you do the assignments using the study material?

Yes No

8.3 Did you work through the commentaries on the assignments and use it to evaluate your answers? Give reason(s) for your answer.

9 Questions with regard to the DVD and satellite broadcasts

9.1 Did you watch the DVD?

Yes No

9.2 Did you enjoy the DVD?

Yes No

9.3 Does the DVD make a contribution to the study material? Give reason(s) for your answer.

9.4 If the lecturers for ILW1036 would conduct satellite broadcasts for the module, which aspects would you like them to address during the satellite broadcasts?

10 Do you have any recommendations that would, according to your learning experience in this module, improve the study package of ILW1036? Please give your recommendation(s) concerning the following aspects:

10.1 Tutorial Letter 501/the "study guide"

10.2 the activities and feedback

10.3 the other three tutorial letters

10.4 the assignments

10.5 the DVD and satellite broadcasts

Thank you very much!

**MRS A JACOBS
MR FM MAHLOBOGWANE**