

COLLEGE OF LAW
SCHOOL OF LAW: DEPARTMENT OF JURISPRUDENCE
INTRODUCTION TO LAW
(ILW1036)

Tutorial Letter 103/2009
(Second Semester)

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 COMMENTARY ON ASSIGNMENT 01**
- 4 COMMENTARY ON ASSIGNMENT 02**
- 5 A WARNING!!**

1 LECTURERS FOR 2009

Your lecturers for 2009 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 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 and 02; the self-evaluation assignment (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; commentary on Assignment 01; commentary on Assignment 02 (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 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

Option (1) is incorrect and does not complete the sentence correctly. Legal norms *do not differ* from community mores in the sense that legal norms govern human conduct. All the different normative systems, thus including legal norms and community mores, *indeed correspond* in the sense that all these systems govern human conduct. (See Study unit 1, pp 8-9 and p 15.)

Option (2) is the correct option which you had to choose in order to complete the sentence correctly. Legal norms differ from community mores in the sense that legal norms apply to *all* communities, whereas community mores only apply to *specific* communities. (See Study unit 1, pp 8-9, pp 12-13 and p 16.)

Option (3) is incorrect and does not complete the sentence correctly. Legal norms do not include all community mores. (See Study unit 1, pp 12-13.)

Option (4) is incorrect and does not complete the sentence correctly. Remember that legal norms can indeed be enforced by an agent, namely a state organ. (See Study unit 1, p 16.)

Question 2

Statement (1) is incorrect. Individual morality and legal norms may in some instances coincide. (See Study unit 1, p 12.)

Statement (2) is correct. In this scenario the sanction for Paul's behaviour is personal and self-inflicted. Since Paul has not been arrested or prosecuted for a crime, the *law cannot enforce the sanction* in this scenario. (See Study unit 1, pp 8-9, pp 11-12 and p 16; as well as Study unit 11, pp 185-186.)

Statements (3) and (4) are incorrect. Since Paul has not been caught for drunken driving or been involved in an accident, he cannot be arrested or prosecuted for a crime. Therefore, the *law cannot enforce the sanction* in this scenario. (See Study unit 1, pp 8-9, pp 11-12 and p 16; as well as Study unit 11, pp 185-186.)

Question 3

Statement (3) is clearly correct. Personality property is the object of a personality right. (See Study unit 2, p 22.)

Question 4

Statement (3) is once again the correct option. Peter's right to the payment of the R600 is called a *personal right*. In law it is also called a claim. (See Study unit 2, pp 22-23, especially (4) on p 23.)

Question 5

Statement (2) is correct. The *Corpus Iuris Civilis* is the codification of Roman law under guidance of Justinian.

Justinian wanted to bring order to the Roman legal system and decided that the Roman law must be codified. Therefore Justinian was *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.)

Question 6

Statement 2 is correct. The South African legal system belongs to the mixed or hybrid legal family. (See Study unit 4, pp 40-41 and p 43.)

Question 7

Statement (1) is incorrect. Law of criminal procedure and law of evidence fall within public law, whereas law of persons falls within private law. (See Study unit 5, p 46.)

Statement (2) is correct. All three the legal disciplines mentioned in this statement, namely administrative law, constitutional law and international law, fall within public law. (See Study unit 5, p 45.)

Statement (3) is incorrect. Criminal law falls within public law and unjustified enrichment within private law, whereas mercantile law falls within both public and private law. (See Study unit 5, p 45 and p 47.)

Statement (4) is incorrect. Law of patrimony and law of obligations fall within private law, whereas law of civil procedure falls within public law. (See Study unit 5, pp 45-47.)

Question 8

Option (4) is correct. Law of property and law of delict can be used to institute a claim for damages done to Mrs Nkosi's car. (See Study unit 5, pp 46-47.)

Question 9

Statements (1), (3) and (4) are incorrect. Foreign law, legal textbooks and legal periodicals are examples of sources of law with persuasive influence. (See Study unit 6, pp 71-72.)

Thus, statement (2) is correct. African indigenous law is the source of law that binds a court in deciding a case because it is regarded as an authoritative source of South African law. (See Study unit 6, p 71.)

Remember, in South African law a **distinction** is made **between authoritative sources of law** (also called primary sources of law) and **sources of law which have persuasive influence** (also called secondary sources of law). Authoritative sources of law have binding authority in court and include legislation, court decisions, common law, custom, and African customary or indigenous law. Sources of law which have merely persuasive influence do not have binding authority in court and include works of modern legal authors and other modern legal systems. (See Study unit 6, pp 68-72 for a discussion of these two kinds of sources in our law.)

Question 10

Statement (3) is correct. See Study unit 6, Activity 6.4, Question (10) on page 112 to 113 and the feedback on Question (10) on page 115.

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

Since statements (a), (b), (c) and (d) all represent main features of the 1993 Constitution, option (4) is correct and therefore the option which you had to choose. (See Study unit 7, pp 121-124.)

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. The decisions of *S v Makwanyane* and *Naude and Another v Fraser*, based on the 1993 and interim Constitution, are proof of the application of these democratic principles even before the final Constitution of 1996. See Study unit 6 in this regard.

Question 2

You had to choose (2) since this statement is false. The Constitution of South Africa 108 of 1996 is not a codification of South African law. Remember, South Africa does not only have one source of law or code, but a number of sources of law. (See Study unit 6, pp 67-68.)

Question 3

You had to choose (2) since this statement is false. The supremacy of the Constitution is only one of the features built into our Constitution to ensure democracy in South Africa. The Constitution also contains a number of other special features which ensure democracy. These special features are the following:

- The Constitution makes provision for the separation of the state's powers.
- The Constitution sets out the structure of the judiciary and the judicial system.
- The Constitution has set up a number of state institutions to support democracy.
- The Constitution contains a Bill of Rights (see Chapter 2 of the Constitution).
(See Study unit 7, pp 122-125. See specifically Activity 7.2, Question (1) on pp 124-125, and the feedback on Question (1) on p 126.)

Question 4

Remark (a) is incorrect. The Bill of Rights is indeed the cornerstone of democracy in South Africa, but it is incorrect to say that no right in the Bill of Rights may be limited. The Bill of Rights does make provision for the limitation of some of the fundamental rights contained in the Bill of Rights. (See Study unit 7, p 122; and Study unit 9, pp 151-154.)

Remark (b) is incorrect. Vertical application of the Bill of Rights, *not* horizontal application, refers to the fact that it applies between the state and private institutions. (See Study unit 8, pp 129-130.)

Thus, option (2) is the option that you had to choose since both remarks (a) and (b) are incorrect.

Question 5

You had to choose option (3) since the right to education is the odd one out. The right to life, the right to human dignity and the right to a fair trial are examples of fundamental rights that cannot be limited during a state of emergency. (See Study unit 8, p 147 for the Table of Non-Derogable rights in s 37 of the Bill of Rights, specifically the reference to s 35; as well as Study unit 9, p 152.)

Question 6

You had to choose option (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 Anna. Anna can institute a civil case against Peter to claim her medical expenses from Peter. (See the DVD or Study unit 10.)

Question 7

You had to choose (2) since this statement is false. In a criminal matter, *not* a civil matter, the type of offence and sentence will determine a court's jurisdiction. Note that in a civil matter the nature of relief and the amount claimed will determine a court's jurisdiction. (See Study unit 10, p 169.)

Question 8

Statement (1) is incorrect. In a civil case the parties are called the plaintiff and the defendant, *not* the plaintiff and the accused. (See Study unit 11, p 186.)

Statement (2) is correct. In a civil case the plaintiff must prove his or her case on a preponderance of probabilities. (See Study unit 11, p 186.)

Statement (3) is correct. In a civil case the main aim is usually to claim financial damages. (See Study unit 11, p 186.)

Statement (4) is correct. In a civil case the parties can be represented by an attorney or an advocate. (See Study unit 11, p 187.)

Question 9

Statement (3) is clearly the correct option which must be used to complete the sentence correctly. The *presiding officer* in a *High Court* is known as a *judge*. (See Study unit 12, p 190.)

Question 10

You will notice a naught (0) with the lecturer's answer to Question 10 on your official results of this assignment, because Question 10 has been cancelled. We decided to cancel this question since the section in Study unit 12 on page 189 to 190, which discusses the statutory requirements for admission as an advocate to the High Court, is not quite correct.

The correct version follows: Advocates are also admitted to the profession by the High Court, provided that they comply with certain **statutory requirements**. One of these requirements includes a **four year LLB degree** obtained from any university in South Africa. However, this does not mean that you can immediately practice as advocate at one of the Bar Councils when you have obtained the LLB degree. **Practising advocates** usually belong to one of the **professional Bar Councils** which are linked to the divisions of the High Court. An example of a bar council is the "Johannesburg Bar". If you want to practice as advocate at one of the Bar Councils, you will first have to do **practical legal training with one of the already qualified advocates** (ie **pupilage for a prescribed period**) and then **successfully complete the Bar Council's examination**.

5 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 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 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