

**COLLEGE OF LAW**

**SCHOOL OF LAW: DEPARTMENT OF  
JURISPRUDENCE**

**INTRODUCTION TO LAW  
(ILW1036)**

**Tutorial Letter 104/2010**

**FINAL TUTORIAL LETTER FOR ILW1036**

Dear Student

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

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| <b>1</b> | <b>LECTURERS FOR 2010</b>                           |
| <b>2</b> | <b>STUDY MATERIAL FOR ILW1036</b>                   |
| <b>3</b> | <b>ASSIGNMENTS AND ADMISSION TO THE EXAMINATION</b> |
| <b>4</b> | <b>FEEDBACK ON ASSIGNMENT 01</b>                    |
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| <b>6</b> | <b>A SERIOUS WARNING!!</b>                          |

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## 1 LECTURERS FOR 2010

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Your lecturers for 2010 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**. There is also a **discussion forum** on *myUnisa*, *Content-related questions for ILW1036 lecturers*, which you can use to ask the lecturers for ILW1036 questions.

**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!**

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## 2 STUDY MATERIAL FOR ILW1036

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The complete study package for ILW1036 consists of:

- **A study guide** - "Only study guide for ILW1036"
- **A DVD** - "The laws of our lives"
- **Tutorial Letters**
  - Tutorial Letter 101/2010 - General information regarding the University and the module ILW1036; information regarding the assignments and admission to the examination for both semesters; **Assignment 01**, the **multiple-choice question** assignment; **Assignment 02**, the **written** assignment; **Assignment 03**, the **self-evaluation assignment** and its **feedback** (pp 31-38 of Tutorial Letter 101) (the first tutorial letter which you should have received by now)

- Tutorial Letter 102/2010 - Lecturers for 2010 (the second tutorial letter which you should have received by now)
- Tutorial Letter 103/2010 - Lecturers for 2010; study material for ILW1036; information regarding the assignments and admission to the examination for both semesters; information regarding the examination for both semesters; how to complete a mark-reading sheet in the examination (the third tutorial letter which you should have received by now)
- Tutorial Letter 104/2010 - Lecturers for 2010; study material for ILW1036; **feedback on Assignment 01**, the multiple-choice question assignment; **feedback on Assignment 02**, the written assignment; a serious warning (this tutorial letter which will be the **last tutorial** letter for the semester)

**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 the "Only 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.

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### **3 ASSIGNMENTS AND ADMISSION TO THE EXAMINATION**

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Once again **study** Tutorial Letter 101/2010, points 7 to 9, page 7 to 15 regarding the assignments, admission to the examination and your semester mark.

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### **4 FEEDBACK ON ASSIGNMENT 01**

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By now you should have received a computer printout providing you with your answers, the correct answers and your mark for Assignment 01, the multiple-choice question assignment for ILW1036. A detailed feedback on each question of the assignment follows. Please compare your answers to the answers in the feedback in order to see where you have made your mistakes. Remember, this assignment is based on the study guide for ILW1036 in its entirety.

### Question 1

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 20; Study unit 9, p 166.)

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 9-10 and p 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 9-10 and p 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, pp 9-10 and p 19.)

**Important note:** Make sure that you can 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 9-10 and 17-19.

### Question 2

**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 23-25, especially (4) on p 25.)

### Question 3

**You had to choose (2) since this statement is false.** 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 compiled in a code, the *Corpus Iuris Civilis*. (See Study unit 3, p 36.)

### Question 4

**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 45-48.)

**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 5

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; see also Activity 6.2, Question (1) and its feedback on p 82 and p 83.)

**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, p 79.)

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, p 79.)

### Question 6

Statements (1), (2) and (4) are correct. All these statements can be regarded as descriptions of a constitution. (See Study unit 7, p 132.)

**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 76 and 77 of Study unit 6 again.

### Question 7

**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, pp 135-136 and p 139.)

### Question 8

**Statement (1) is correct.** The right to human dignity is an example of a first-generation right. (See Study unit 8, p 142.)

Statement (2) is incorrect. First-generation rights, *not* second-generation rights, protect the individual from the abuse of state power. (See Study unit 8, p 142.)

Statement (3) is incorrect. Second-generation rights are known as "red rights", *not* as "green rights". (See Study unit 8, p 142.)

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 142; Study unit 9, p 166.)

### Question 9

**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 11.)

### 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 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 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 12, pp 211-212; see Study unit 13, p 215 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.)

## 5 FEEDBACK ON ASSIGNMENT 02

A detailed feedback on each question of Assignment 02, the written assignment, follows. Please compare your answers to the answers in the feedback in order to see where you have made your mistakes.

### Question 1

Mr Dingaan is an attorney. He represents a client, Mr Zulu, who is sued for the amount of R50 000 by his neighbour, Mr Nkosi. One evening when Mr Zulu came home from a party, he drove into Mr Nkosi's wall and damaged a part of it. Mr Nkosi now sues Mr Zulu for the costs to repair the wall which he claims will be an estimated R50 000.

- 1.1 Which main division of South African law will be applicable to this problem? Give a reason for your answer. (1)**

**Answer:** The **main division** of the South African law which will be applicable to this problem will be **private law**.

**Reason: One of the following reasons will be a correct reason for the answer "private law":**

- Private law will be applicable because the purpose of private law is to ensure that the interests of individuals/persons are protected.
- Private law deals with the legal position of individuals/persons.
- Private law is applicable to individuals/persons.

(See Study unit 5, pp 50-51.)

- 1.2 Which division of your answer in 1.1 will be applicable? Give a reason for your answer. (1)**

**Answer:** The **division of private law** which will be applicable to this problem will be the **law of patrimony**.

**Reason:** The **law of patrimony** concerns the **relationship between persons and their means/things/property with a value in money**.

(See Study unit 5, p 52.)

- 1.3 Which subdivision of your answer in 1.2 will be applicable? Give a reason for your answer. (1)**

**Answer:** The **subdivision of the law of patrimony** which will be applicable to this problem will be the **law of obligations**.

**Reason:** An obligation is a legal relationship between two parties in terms of which one party has a right against another party for performance and the other party has a duty to perform. In this case an obligation, in other words a legal relationship, has arisen between Mr Nkosi and Mr Zulu. Mr Nkosi has a right to performance (that is the right to the payment for the costs to repair the wall) against Mr Zulu who has an obligation to perform (that is the obligation to pay the costs to repair the wall).

(See Study unit 5, p 53.)

- 1.4 Which further subdivision of your answer in 1.3 will be applicable? Give a reason for your answer. (1)**

**Answer:** The **further subdivision of the law of patrimony** which will be applicable to this problem is the **law of delict**.

**Reason:** The law of delict is one of the ways in which an obligation can arise. In this case an obligation, a legal relationship, has arisen between Mr Nkosi and Mr Zulu. Mr Nkosi has a right to performance against Mr Zulu, in other words Mr Nkosi has a right to claim compensation from Mr Zulu. Mr Zulu would either have to repair the wall or pay compensation to Mr Nkosi for the costs to repair the wall. On the other hand Mr Zulu has a duty to perform, in other words he has the duty to repair the wall or pay the costs to repair the wall.

(See Study unit 5, p 53.)

**1.5 In which court will Mr Nkosi institute his case against Mr Zulu, his neighbour? Give a reason for your answer. (1)**

**Answer:** Mr Nkosi will institute his case against Mr Zulu, his neighbour, in a magistrate's court/lower court/district court.

**Reason:** The amount that Mr Nkosi claims, is R50 000. Thus, the amount is less than R100 000.

**Important note:** Remember, the court in which a claim for the payment of damages is instituted, will depend on the amount that is claimed. If the amount is not too large (less than R100 000), the claim will be instituted in a magistrate's court/lower court/district court. If it is a large amount (more than R100 000), the claim will be instituted in the High Court.

(See Study unit 11, pp 190-191; TL101/2010, p 34 and p 37; and TL 103/2010, p 5.)

**[5]**

**Question 2**

**Name and briefly discuss** the criteria, as set out in section 36 of the Constitution, in terms of which a right contained in the Bill of Rights may be limited. (5)

**Answer:**

The following criteria, as set out in section 36 of the Constitution, will be taken into account when a right contained in the Bill of Rights must be limited.

In the **first place** the law that limits the right must be of general application, in other words the limitation must apply to everyone in South Africa.

In the **second place** the limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. In other words, there must be a good reason to limit the right within the context of a constitutional democracy.

In the **third place** all the relevant points must be taken into account. The following questions must be asked and answered before a right can be limited:

- What is the *nature* of the *right*? In other words, what kind of right is it?
- What is the *purpose* of the *limitation*?
- How *important* is the *purpose* of the *limitation*?
- What is the *nature* of the *limitation*? In other words, what kind of limitation will it be?
- What is the *extent* of the *limitation*? In other words, how much of a limitation will it be?
- What is the *relation* between the *limitation* and the *purpose* of the *limitation*? In other words, is the relation between the limitation and the purpose of the limitation strong enough to justify the limitation?
- Could the *purpose* be *achieved* by *using a less restrictive way*? In other words, is there a way to limit the right that would still achieve the same results, but would be less restrictive?

### General comments regarding the answer to this question

- 1 In the first place you had to mention the first two criteria in order to obtain the first two of the five marks.
- 2 In the case of the first two criteria it is important that you had to indicate that you understand that it is "the law that limits" or "the limitation" which must be of general application and which must be reasonable. In the case of vague answers such as "it must be generally accepted" or "it must be of general application" or "it must be reasonable", the markers did not award any marks.
- 3 In order to earn the last three marks, you could have mentioned any three of the questions that must be asked before a right can be limited.

(See Study unit 9, pp 164-165.)

[5]  
TOTAL: [10]

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## 6 A SERIOUS WARNING!!

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Students usually do well in their assignments, especially the multiple-choice question assignments, because the questions in the assignments are short and students have their study material at hand when they answer the assignment questions. Be warned! If you obtained good marks for your assignments, in other words if you obtained a good semester mark, it does not necessarily mean that you will obtain a good mark in the examination. Do not allow a good semester mark to create a false impression that you already know the study material for ILW1036 for examination purposes.

Remember, the examination is very different! In the examination paper different kinds of questions are asked (see in this regard Tutorial Letter 103/2010 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 feedback on the assignments or the contents of the study material. Should you happen to be in Pretoria, you are most welcome to make an appointment and pay us a visit 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 MN NJOTINI**

PRETORIA