

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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| 1 | LECTURERS FOR 2010 |
| 2 | STUDY MATERIAL FOR ILW1036 |
| 3 | YOUR SEMESTER MARK |
| 4 | FEEDBACK ON ASSIGNMENT 01 |
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| 6 | A SERIOUS WARNING!! |

1 LECTURERS FOR 2010

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, **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!

2 STUDY MATERIAL FOR ILW1036

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; your semester mark; **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 this 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 all the tutorial letters which you have received.**

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

3 YOUR SEMESTER MARK

Once again **study** Tutorial Letter 101/2010, page 10 regarding your semester mark.

4 FEEDBACK 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, 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

Statement (1) is correct. Legal norms correspond with community mores in the sense that legal norms also govern human conduct. (See Study unit 1, p 5 and p 15.)

Statement (2) is incorrect. Legal norms apply to all communities whereas community mores only apply to a specific community as a whole or a group within that community. (See Study unit 1, pp 7-8, pp 12-13 and p 16.)

Statement (3) is incorrect. Legal norms include some community mores but not all community mores. (See Study unit 1, pp 7-8 and pp 12-13.)

Statement (4) is incorrect. Legal norms can be enforced by an agent, namely by the state or a state organ. (See Study unit 1, p 16.)

Question 2

Statement (3) is 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 23-25, especially (4) on p 25.)

Question 3

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

Important note: Justinian wanted to bring order to the Roman legal system and decided that the Roman law must be codified. This 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 36.)

Question 4

Statement (2) is correct. The South African legal system belongs to the mixed or hybrid legal family. (See Study unit 4, pp 45-46 and p 48.)

Question 5

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 52-53.)

Question 6

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 81-82.)

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 81.)

Important note: 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 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 77-83 for a discussion of these two kinds of sources in our law.)

Question 7

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 76-77.)

Question 8

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 8, p 143 and Study unit 9, pp 163-165.)

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 143-144.)

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

Question 9

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 and Study unit 11.)

Question 10

Statement (1) is correct. In a civil case the main aim is usually to claim financial damages. (See Study unit 12, p 212.)

Statement (2) is correct. In a civil case the parties are called the plaintiff and the defendant. (See Study unit 12, p 212.)

Statement (3) is correct. In a civil case the parties can be represented by an attorney or an advocate. (See Study unit 12, p 212.)

Statement (4) is incorrect. In a civil case the plaintiff must prove his or her case *on a preponderance of probabilities*, **not beyond** a preponderance of probabilities. (See Study unit 12, p 212.)

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

Name and briefly discuss the special features which have been built into our Constitution to ensure that our democracy succeeds. (5)

Answer:

In Study unit 7 of your study guide on page 135 to 137 the following special features are mentioned and discussed:

- 1 The Constitution is the supreme or highest law of our country. Therefore every person, every organisation or institution, as well as all law are ruled by the Constitution.
- 2 The Constitution provides for the separation of the state's powers into three sections, namely the legislative authority (that makes law), the executive authority (that applies and carries out laws) and the judicial authority or judiciary (that decides legal disputes).
- 3 The Constitution sets out the structure of the judiciary, in other words the structure of the different courts. The main courts are the Constitutional Court, the Supreme Court of Appeal, the High Courts and the Magistrates' Courts. The Constitution also sets out the structure of the judicial system.
- 4 The Constitution names a number of state institutions that must support our democracy, for example the Public Protector, the Human Rights Commission, , the Auditor-General, the Electoral Commission and the Independent Authority to Regulate Broadcasting.
- 5 The Constitution contains a Bill of Rights which protects the fundamental rights that each person has.

Important note: Students who discussed only one of the above-mentioned features in detail were penalised. Depending on the information that they provided in their answers, a maximum of one mark was awarded.

[5]

Question 2

One Monday morning David Nkosi is on his way to work on his motorbike. At a very busy intersection in town a red sports car, travelling at a very high speed, skips the red light and crashes into David. David's motorbike, valued at R250 000, is damaged beyond repair. A bystander calls the police and the ambulance. David has sustained several injuries. He has broken both his collar bone and his left leg. The ambulance takes David to hospital. When the police arrive, they say that it is apparent from the accident scene that the driver of the sports car, Kevin Rich, drove at a speed of at least 130 km per hour. The police take Kevin away for questioning.

2.1 Name the different legal disputes that might arise from these facts. Also explain the purpose of each of these disputes that you name. (2)

Answer: The *first* dispute that might arise from these facts is a *criminal dispute* or a *criminal case* because of Kevin's reckless and negligent driving of his sports car. The *purpose* of a criminal case: The *state* wants to *punish* (in other words, to fine or to send to prison) an offender or an accused for committing a crime.

The *second* dispute that might arise from these facts is a *civil dispute* or a *civil case* because David wants to claim from Kevin the financial damages to his motorbike as well as all the medical expenses because of the accident. The *purpose* of a civil case: The plaintiff wants to claim financial damages or compensation from the defendant.

(See Study unit 12, pp 210-212.)

Important note: In your answer you should have clearly indicated the two legal disputes, namely a criminal case and a civil case, as in the feedback above. Directly after you have named the kind of dispute, you should have explained the purpose of the dispute as in the feedback above. Please note that if you have argued that it is a criminal dispute because of Kevin's reckless and negligent driving of his sports car, then you have merely identified the dispute and the crime committed, and have not yet answered the question what the purpose of a criminal dispute is.

2.2 In which court will David claim the R250 000 for his motorbike? Give a reason for your answer. (1)

Answer: David will claim the R250 000 for his motorbike in a High Court.

Reason: The amount that David claims is R250 000. The amount is more than R100 000 and therefore falls within the jurisdiction of the High Court.

Important note: Remember, the court in which a claim for the payment of damages (in other words a civil case) 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 or lower court. If it is a large amount (more than R100 000), the claim will be instituted in a High Court.

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

2.3 Who will be the presiding officer in this court and what is the role of this officer in court? (1)

Answer: A judge will be the presiding officer in a High Court. The role of a judge is to preside over the legal proceedings, to consider the facts and the law, and to come to a decision or to give judgment.

(See Study unit 11, pp 176-177 and Study unit 12, p 212.)

2.4 What role will David and Kevin respectively play in the case where David claims the R250 000 for his motorbike? (1)

Answer: The case in which David claims the R250 000 for his motorbike is a civil case. Therefore David will be the plaintiff and Kevin the defendant.

(See Study unit 12, p 212.)

[5]
TOTAL: [10]

6 A SERIOUS WARNING!!

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