

Tutorial letter 101/3/2016

Legal Philosophy

LJU4801

Semesters 1 & 2

Department of Jurisprudence

IMPORTANT INFORMATION:

This tutorial letter contains important information on the module, the assignments and the examination paper for this module.

BAR CODE

TABLE OF CONTENTS

1	INTRODUCTION	4
2	PURPOSE OF AND OUTCOMES FOR THE MODULE	5
	2.1 Purpose	5
	2.2 Outcomes	5
3	LECTURER(S) AND CONTACT DETAILS	5
	3.1 Lecturer(s)	5
	3.2 University	6
4	MODULE-RELATED RESOURCES	6
	4.1 Prescribed books	6
	4.2 Recommended books	6
	4.3 Electronic Reserves (e-Reserves)	6
5	STUDENT SUPPORT SERVICES FOR THE MODULE	6
	5.1 Discussion classes	6
	5.2 Tutorial classes	6
	5.3 myUnisa	7
	5.4 Students with special needs	7
6	MODULE-SPECIFIC STUDY PLAN	7
7	PRACTICAL WORK AND WORK-INTEGRATED LEARNING	8
8	ASSESSMENT	8
	8.1 Assessment plan	8
	8.2 General assignment numbers	8
	8.2.1 Unique assignment numbers	8
	8.2.2 Due dates for assignments	8
	8.3 Submission of assignments	9
	8.4 Assignments	10
	8.4.1 Assignments and learning	10
	8.4.2 The assignments	10
	8.4.3 Assessment of assignments	10
9	OTHER ASSESSMENT METHODS	11
10	EXAMINATION	11
	10.1 Examination period	11
	10.2 The examination paper	11
	10.2.1 The scope of the examination	11
	10.2.2 The format of the examination paper	11
	10.3 General guidelines for answering examination questions	11
	10.4 Previous examination papers	12
11	FREQUENTLY ASKED QUESTIONS	12
	11.1 General questions	12
12	CONCLUSION	12

13	ASSIGNMENTS	13
	13.1 Assignments for the first semester	13
	13.2 Assignments for the second semester	23
ANNEXURE A	35
ANNEXURE B	36

1 INTRODUCTION

Dear Student

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. You will be well on your way to success if you start studying early in the semester. Take time to do the assignments properly. These include **two assignments** which *must* be submitted.

The Department of Despatch should supply you with the following study material for this module:

- A Study Guide
- Tutorial Letters 101 and 301
- Additional tutorial letters

IMPORTANT: This is Tutorial Letter 101 which you should have received upon registration. Please read this Tutorial Letter as soon as possible and before you start working on this module.

Note: Some of this tutorial matter may not be available when you register. Tutorial matter that is not available when you register will be posted to you as soon as possible, but is also available on *myUnisa*.

Tutorial Letter 101: This tutorial letter contains important information about **administrative arrangements** as well as the **assignments** for this module. We urge you to read it carefully and to keep it at hand when working through the study material, completing the assignments, preparing for the examination and addressing questions to your lecturers.

Tutorial Letter 301: Please read Tutorial Letter 301 in combination with Tutorial Letter 101 as it provides you with important **general information** on studying at UNISA and, specifically, within the College of Law.

Additional tutorial letters that you may expect later in the semester will, for example, include feedback on the assignments. We would like to point out that **you must read all the tutorial letters** you receive during the semester *immediately* and *carefully*, as they always contain important and, sometimes, urgent information. Also take note that the tutorial letters you receive **form part of your study material** and should be taken into account when you prepare for the examination.

myUnisa and the internet: Remember that *myUnisa* provides you with additional opportunities to take part in activities and discussions of relevance to this module and gives you easy access to assignments and your results. However, you must be registered on *myUnisa* to be able to submit assignments, gain access to the library functions and various learning resources, download study material, "chat" online to fellow students about your studies and the challenges you encounter, and participate in online discussion forums.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE OF AND OUTCOMES FOR THE MODULE

2.1 Purpose

We know that it is unlikely that you have ever had to deal with philosophy as a subject before. That is why we do not expect you to become a philosopher after one semester course.

What we expect from you is set out in the outcomes listed below. This is explained further in the Introduction to your Study guide.

2.2 Outcomes

On completion of this module you should be able to do the following:

1. Define and explain the most important concepts and ideas in legal philosophy as it is used in the various philosophies studied.
2. Apply the various philosophies to selected practical cases to illustrate how they influence South African law and legal developments.
3. Be able to integrate facts and theory: in other words to properly apply the philosophy/theory to the facts.
4. Use proper grammar, spelling, formulation and full sentences in an essay format to explain your ideas.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

The following lecturers are responsible for this module:

Mrs SR Smith (module leader)

Brooklyn Campus S02-010
E-mail: haggis@unisa.ac.za
Tel: 012 433 9512

Professor Magda Slabbert

Brooklyn Campus S02-038
E-mail: slabbm@unisa.ac.za
Tel: 012 433 9497

E-mail and telephone numbers are included above but you may also want to write to us. **Letters to lecturers may not be enclosed with, or inserted into assignments.** Letters should be sent to:

The Module leader (LJU4801)
Department of Jurisprudence
PO Box 392
UNISA
0003

- Please address all **content related enquiries** to Mrs SR Smith in the first semester and Mrs Smith or Professor Slabbert in the second semester.
- Please **address administrative enquiries regarding assignments** to assign@unisa.ac.za .
- Please address **administrative enquiries regarding exams** to exams@unisa.ac.za .
- **PLEASE NOTE: The lecturers cannot assist you with general administrative matters**, including those pertaining to registration, submission of assignments, examination dates/venues or examination results. Such matters should be addressed to the relevant administrative department. Please see the brochure *My Studies @ Unisa* in this regard.

3.2 University

General Unisa contact details may be found in the *My Studies @ Unisa* brochure, which you should have received upon registration. Remember to use your student number when you contact the University.

4 MODULE-RELATED RESOURCES

4.1 Prescribed books

There is no prescribed textbook for LJU4801. This means that you do not have to buy any additional books for LJU4801. You need only study your Study Guide and the tutorial letters.

4.2 Recommended books

There are no recommended books for this module.

4.3 Electronic Reserves (e-Reserves)

There is no prescribed additional reading or e-reserves for this module.

5 STUDENT SUPPORT SERVICES FOR THE MODULE

Please consult the *My Studies @ Unisa* brochure for information regarding student support services.

5.1 Discussion classes

Please note that discussion classes for the module LJU4801 may be offered during 2016. Please consult myUnisa for more information.

5.2 Tutorial classes

Please consult the publication *My Studies @ Unisa* which you received with your study material for more information on tutorial classes in your region. Tutorial classes are offered at the regional offices if the minimum number of students registers for such classes.

5.3 myUnisa

As indicated, *myUnisa* is a very useful resource. If you have access to a computer that is linked to the Internet, you can quickly access resources and information at the University. The *myUnisa* learning management system is Unisa's online campus that will help you to communicate with your lecturers, with other students and with the administrative departments of Unisa – all through the computer and the Internet. All you have to do is to register on *myUnisa* – please note that your lecturers cannot assist you with this process. Please consult the *My Studies @ Unisa* brochure in this regard.

To access these functions, go to the main Unisa website, <http://www.unisa.ac.za>, and then click on the “Login to *myUnisa*” link. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

You are encouraged to use the *myUnisa* website as it is another (and faster) way that your lecturers can communicate with you. Some of the functions that should be of use to you for this module include:

- **The discussion forum:** This forum may be used to contact your lecturers and fellow students and even to form virtual study groups. You are encouraged to use the discussion forum allocated to LJU4801 for this purpose. All the students registered for a particular semester will be able to participate in and view the discussions.
- **Announcements:** From time to time your lecturers will make important announcements regarding new developments or administrative arrangements. We urge you to keep up to date with any announcements by regularly accessing this forum.

5.4 Students with special needs

Disabled students are invited to contact the lecturers to organize alternative assessments for assignments or the examination. This will however only be granted in special circumstances and when specifically requested by the student.

Please also see the following websites in this regard:

Library (www.unisa.ac.za/library/)

The *Advocacy and Resource Centre for Students with Disabilities*

(<http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=16599>)

6 MODULE-SPECIFIC STUDY PLAN

There is a discussion forum for this module on *myUnisa*. This discussion forum includes the activities in the Study Guide. It is intended to help you plan your studies (by indicating where you should be in the Study Guide) and to show you what other students are doing.

We urge you to post your contributions on the site – the lecturers and other students will comment on them and this will assist in making your answers better.

Use your *My studies @ Unisa* Brochure for general planning and time management skills.

7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

There are no practicals for this module.

8 ASSESSMENT

8.1 Assessment plan

In this module you will have to do two assignments. The first assignment consists of multiple choice questions. The second assignment is a written assignment. Both assignments will be counted together towards your semester mark.

How the assessment system works: Only students who submit both assignments *before or on the date of submission* will be admitted to the examination. If you do not submit both assignments you will not be admitted to the examination.

Both Assignments 01 and 02 will be taken into account for your year mark. Your year mark constitutes 20% of your final mark. You need to obtain **at least 40% in the examination** before your year mark will be taken into account.

How will this work in practice?

- Your **YEAR MARK** counts **20%** (Assignment 01 counts 10% and Assignment 02 counts 10%) of your final mark.
- Your **EXAMINATION MARK** counts **80%** of your final mark.
- Your **FINAL MARK** for the module will thus be calculated as follows: **20% (year mark) + 80% (examination mark) = 100% (final mark).**

8.2 General assignment numbers

You have to submit two compulsory assignments for this module, Assignment 01 and Assignment 02.

8.2.1 Unique assignment numbers

In addition to the general assignment number, each assignment has a unique number. These unique numbers appear on the assignments below. Please ensure that this unique number is clearly indicated on the assignments that you submit to the University.

8.2.2 Due dates for assignments

Please note that **NO ASSIGNMENTS WILL BE ACCEPTED after the relevant due date.** Also, please note that your lecturers cannot grant any extension for the late submission of assignments. Please stick to the due dates. This means that you should take into account the submission dates for Assignments 01 and 02 when planning your study schedule. It also means that you must plan ahead.

The closing dates for the submission of Assignments 01 and 02 are:

- **First semester**

Assignment 01: 29 February 2016

Assignment 02: 30 March 2016

- **Second semester**

Assignment 01: 22 August 2016

Assignment 02: 12 September 2016

8.3 Submission of assignments

Assignments may not be submitted by fax or e-mail.

You may submit written assignments either by post or electronically via *myUnisa*. Remember that assignments may not be submitted by fax or e-mail.

The best way to ensure that the University receives your assignment is to submit it via *myUnisa*.

For detailed information on assignments, please refer to the *My Studies @ Unisa* brochure which you received with your study package, alternatively the *myUnisa* website.

Assignments should be addressed to:

The Registrar

PO Box 392

Unisa

0003

To submit an assignment via *myUnisa*:

Go to *myUnisa*.

Log in with your student number and password.

Select the module.

Click on “Assignments” in the menu on the left-hand side of the screen.

Click on the assignment number you wish to submit.

Follow the instructions.

8.4 Assignments

8.4.1 Assignments and learning

Assignments are regarded as part of the learning material for this module. When you do your assignments, study the Study Guide, discuss the work with fellow students or tutors, participate in the discussion forum on *myUnisa* or do research, you are actively engaged in learning.

8.4.2 The assignments

IMPORTANT:

Assignment 01 and 02 are compulsory assignments and must be submitted on or before the due date to gain access to the examination. Both Assignments 01 and 02 counts towards your year mark.

Your lecturers **do not have the authority** to grant extension of time for the submission of assignments.

Assignment 01 is a multiple-choice assignment. You will receive the correct answers to this assignment automatically. However, a detailed commentary on Assignment 01 will be sent to all students in a tutorial letter and will be posted on *myUnisa*.

Assignment 02 is a written assignment. Commentary on this assignment will be sent to all students and will be posted on *myUnisa*. Please note that in this assignment, you will also be evaluated on your writing and referencing skills (see par 8.4.3 below).

As soon as you have received the commentaries, please check your answers. Doing the assignments and carefully studying the commentaries on them constitute an important part of your learning and should help you to be better prepared for the examination.

8.4.3 Assessment of assignments

Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University. Please see Tutorial letter 301 for an explanation of exactly what constitutes plagiarism.

PLEASE NOTE THAT IF YOU SUBMIT A WRITTEN ASSIGNMENT WITHOUT COMPLETING AND INCLUDING THE ACADEMIC HONESTY DECLARATION (AS CONTAINED AFTER EACH ASSIGNMENT QUESTION) YOU WILL BE PENALISED.

Please note that in addition to your knowledge of the content of a module you will also be assessed on your writing and language skills. We have incorporated this aspect into Assignment 02. It is therefore important that you pay attention to formulation (sentence construction), language (spelling, grammar, punctuation) and referencing when completing the assignment. Also note that **cell phone language is not acceptable**. It is also not acceptable to write in point form or with bullets and/or numbering. Marks may be deducted for poor writing skills.

9 OTHER ASSESSMENT METHODS

There are no other assessment methods for this module.

10 EXAMINATION

10.1 Examination period

This module is offered in a semester period of fifteen weeks. This means that if you are registered for the first semester, you will write the examination in May/June 2016 and the supplementary examination will be written in October/November 2016. If you are registered for the second semester you will write the examination in October/November 2016 and the supplementary examination will be written in May/June 2017.

After registration and before the examination, the Examination Section will provide you with general information on the examination, including information on examination venues, dates and times. If you do not receive this information, please contact the Department of Examinations a few weeks before the examination commences. Alternatively, you should be able to access this information online on *myUnisa*. **Please note that your lecturers cannot assist you with this information.**

10.2 The examination paper

You will be writing a two-hour examination paper for 80 marks.

10.2.1 *The scope of the examination*

- The Study Guide and tutorial letters must be studied in their entirety. This means that all the study material will be covered in the examination and *nothing* should be left out when you prepare for the examination.
- It is not sufficient to study only the previous examination papers (available on *myUnisa*), the activities in the Study Guide and the assignments.

10.2.2 *The format of the examination paper*

The format of the examination paper for this module will be sent to you in the course of the semester in a separate tutorial letter.

10.3 General guidelines for answering examination questions

Please consult the Introduction to the Study Guide for information on what we expect in the examinations.

10.4 Previous examination papers

The University (not the lecturers) makes a previous examination paper available on *myUnisa*. **No other examination papers will be made available to students and no answers to the questions will be provided by your lecturers.**

11 FREQUENTLY ASKED QUESTIONS

11.1 General questions

The *My Studies @ Unisa* brochure contains an A-Z guide of the most relevant general study information. Please consult this brochure before contacting the University or your lecturers.

12 CONCLUSION

We trust that you will enjoy this module. Please remember that you are welcome to contact any of us should you have any questions relating to the content of this module. We wish you success with your studies.

Kind regards

MRS SR SMITH (Module leader)
PROF MAGDA SLABBERT

13 ASSIGNMENTS

13.1 Assignments for the first semester

**FIRST SEMESTER: ASSIGNMENT 01
CLOSING DATE: 29 FEBRUARY 2016
UNIQUE NUMBER: 715945**

The first assignment consists of twenty (20) multiple choice questions:

Question 1

When using the short form of referencing in the footnotes, the correct way to reference page 37 of the Study Guide in the Bibliography is:

- (1) Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012) pg 37.
- (2) Kroeze and Smith *Legal Philosophy*
Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).
- (3) Kroeze IJ and Smith SR *Legal Philosophy* 37.
Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).
- (4) Kroeze C *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).

Question 2

“Although no statistical or survey evidence was produced to establish this fact, I see no reason to doubt the assertion that mothers, as a matter of fact, bear more responsibilities for child-rearing in our society than do fathers.”

The correct way to reference this quote of Justice Goldstone in the footnotes is:

- (1) *President of the Republic of South Africa v Hugo* 1997 4 SA 1 (CC) [37].
- (2) *Hugo v President of the Republic of South Africa* 1997 4 SA 1 (CC) [37].
- (3) *President of the Republic of South Africa v Hugo* 1997 4 SA 1 (CC) [37].
- (4) *President of the Republic of South Africa v Hugo* 1997 4 SA 1 (CC) [37].

Question 3

Choose the correct answer:

The characteristics of pre-modern legal thinking are:

- (1) natural order, common good, metaphysics and natural law.
- (2) homogenous, higher, natural or god-give order and the common good.
- (3) idealism, rationalism and essentialism.
- (4) natural order, the common good and metaphysical assumptions.

Question 4

Indicate whether the following statement is true or false.

According to Plato human laws should be measured against the ideal of justice.

- (1) True
- (2) False

Question 5

Choose the correct answer:

Which philosopher(s) argued that the natural purpose of man is to be an *animal sociale et politicum* – a social and political being?

- (1) Aristotle.
- (2) Plato.
- (3) Aquinas and Aristotle.
- (4) Dworkin.

Question 6

Indicate whether the following statement is true or false.

According to Aquinas perverted law is not law.

- (1) True
- (2) False

Question 7

Choose the correct answer:

In *S v Makwanyane and another* 1995 3 SA 391 (CC) the yardstick to measure the pre-political rules was:

- (1) The common good.
- (2) Ubuntu.
- (3) Positivism.
- (4) Realism.

Question 8

Grotius stated that the principles of natural law can be seen in four functions of law namely;

- (a) The protection of ownership
- (b) The enforcement of contracts
- (c) The awarding of damages
- (d) The punishment for contravening these principles.

Choose the correct answer:

- (1) All of the above are correct.
- (2) Only (a),(b) and (d) are correct.
- (3) Only (a),(b) and (c) are correct.
- (4) Only (b) and (d) are correct.

Question 9

Which of the following cases exhibit natural law thinking?

- (a) *Port Elizabeth Municipality v Minister of Safety and Security* 2000 2 SA 1074 (SE).
- (b) *Rangani v Superintendent-General, Department of Health and Welfare, Northern Province* 1999 4 SA 385 (T).
- (c) *First National Bank v Bophuthatswana Consumer Affairs Council* 1995 SA 853 (BG).
- (d) *Monnake and others v Government of the Republic of Bophuthatswana* 1991 1 SA 598 (BG).

Choose the correct answer:

- (1) Only (a), (b) and (c) are correct.
- (2) Only (b) and (d) are correct.
- (3) All of the above are correct.
- (4) Only (a), (b) and (d) are correct.

Question 10

The characteristics of early modern thinking are:

- a) individualism.
- b) scientific method.
- c) metaphysical beliefs.
- d) scientific world view

Choose the correct answer:

- (1) Only (a), (b) and (c) are correct.
- (2) Only (a), (b) and (d) are correct.
- (3) All of the above are correct.
- (4) Only (a) and (b) are correct.

Question 11

Hobbes suggested that:

- (a) Natural law is nothing more than the rational actions of individuals to further their own interests.
- (b) The most fundamental law of nature is self -preservation.
- (c) All dictators are benevolent.
- (d) "Life is solitary, poor, nasty, brutish and short."

Choose the correct answer:

- (1) All of the above are correct.
- (2) Only (a), (b) and (d) are correct.
- (3) Only (a), (b) and (c) are correct.
- (4) Only (b) and (d) are correct.

Question 12

Choose the most correct answer:

The current legal system in South Africa is predominantly:

- (1) A social contract.
- (2) Positivist.
- (3) Feministic.
- (4) Based on the views of the Realists.

Question 13

The following quote is from which case?

'But where the statute under consideration in clear terms confers on the Executive autocratic powers over individuals, courts of law have no option but to give effect to the will of the Legislature as expressed in the statute.'

- (1) *Preston v Biden's Trustee* (1883) 1 BUCH 322 333.
- (2) *Lochner v New York* 198 US 45 (1905).
- (3) *S v Makwanyane and another* 1995 3 SA 391 (CC).
- (4) *R v Sachs* 1979 4 SA 392 A 399H.

Question 14

Indicate which option best completes the sentence.

For Ronald Dworkin, constructive interpretation means...

- (1) reading legal rules in a manner which makes them the best legal rules that they can be.
- (2) reading legal rules in a manner which places primary focus on policy considerations.
- (3) reading legal rules in a manner which places primary focus on political interests of the state.
- (4) reading legal rules in a manner which incorporates values through metaphysical thinking.

Question 15

The following cases can be used as examples for Rawls's theory of the social welfare state:

- (a) *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 1 SA 765 (CC).
- (b) *Government of the RSA and others v Grootboom and others* 2000 1 SA 46 (CC).
- (c) *The Minister of Health v Treatment Action Campaign and others* (CCT) 8 /02.
- (d) *S v Makwanyane and another* 1995 3 SA 391 (CC).

Choose the correct answer:

- (1) All of the above are correct.
- (2) Only (a), (b) and (d) are correct.
- (3) Only (a), (b) and (c) are correct.
- (4) Only (b) and (d) are correct.

Question 16

Choose the correct option below.

- (1) CLS scholars (Crits) employ the concept of false consciousness to illustrate how the law is a-political in nature.
- (2) CLS scholars (Crits) approach the law as an ideology that entrenches and justifies unfair social constructs.
- (3) Through the style of legal scholarship called "trashing", CLS scholars (Crits) illustrate that meaning is not inherent in the language we use.
- (4) For CLS Scholars (Crits), the fundamental contradiction of the law refers to the individual being subject *to* the law, but not a subject *of* the law.

Question 17

Indicate whether the following statement is true or false.

Carol Gilligan's theory on difference feminism is criticised by Mary Joe Frug.

- (1) True
- (2) False

Question 18

“One is not born a woman, one becomes a woman” summarises the position of

- (1) Essentialist feminism.
- (2) Non-essentialist feminism.

Question 19

Indicate the correct option:

Recurring themes in legal philosophy are:

- (1) The conflict between the individual and the community, law and morality, and the source of values.
- (2) The conflict between the individual and others, law and morality, and the source of values.
- (3) The conflict between the individual and the community, law and justice, and the source of values.

Question 20

Mrs Smith and Professor Slabbert can be contacted for help with the content of the module by:

- (1) Phoning or e-mailing on (012) 433 - 9512, haggis@unisa.ac.za or (012) 433 – 9497, slabbm@unisa.ac.za
- (2) Telepathic messaging.
- (3) Coming into the office in tears after the exam is over.
- (4) Pigeon mail.

FIRST SEMESTER: ASSIGNMENT 02
CLOSING DATE: 30 March 2016
UNIQUE NUMBER: 748951

The declaration should be included with a written assignment, typed at the end of an assignment or scanned together with an assignment as a PDF. Please note that when you sign this you are acknowledging that you know what plagiarism is, how plagiarism is committed and what disciplinary action may be taken against students who commit plagiarism.

Instructions for the assignment

1. Read the following article and answer the question below.
2. Answers must take the format of a **professional typed essay** with **correct referencing**.
 - 2.1. **Essays which are not correctly referenced will be penalised.** The School of Law referencing style is detailed in Tutorial Letter 301.
 - 2.2. Essays which use **bullets or numbering will be penalised.**
 - 2.3. Essays which use SMS speak, abbreviations, incorrect grammar or have not been edited will be penalised.
 - 2.4. If you **plagiarise** in any way, your essay **will be penalised** and disciplinary action may be taken against you.
3. Marks are allocated for knowledge of the study material, application to the scenario, language and referencing. Refer to the mark allocation form attached as annexure A.
4. You have to attach the Academic Honesty Declaration.

Editorial: Matter of life and death¹

We agree wholeheartedly with Judge Hans Fabricius who, in his judgment on the case of assisted suicide brought by Robin Stransham-Ford, said that the overall matter of the right to die with dignity should go to the Constitutional Court for definitive and binding judgment. The case was brought to the high court in Pretoria. Stransham-Ford, who was dying of terminal cancer (and in fact died a “natural” death on the very day judgment was delivered), demanded the right to be able to have a doctor assist in his choice of when and how to end his own life in the face of unbearable and ongoing pain.

...

Another reason the Constitutional Court must rule on the matter is the opposition to doctor-assisted dying from both the minister of health and the National Prosecuting Authority. The latter’s chief worry is that this judgment causes confusion about how to apply the law that, as it stands, makes it illegal for doctors to help patients to die. If they do, they face both a criminal charge from the NPA and an ethics charge from the Health Professions Council.

The objection from the health minister is that it is up to God, not a doctor or even the terminal patient, to decide when that person shall die. This view is both easier to deal with and harder to combat – easier because an argument based on God’s will is intellectually simple to refute (South Africa is not a theocracy but a constitutional democracy) and harder because faith-based views are almost impossible to undo. A Constitutional Court judgment on the matter would clear that up.

The issue is about a person’s democratic rights, not about whether God has a problem with mere humans usurping his prerogative to decide who dies when. It’s about the patient: a citizen guaranteed human dignity in our Bill of Rights. It’s not about extending the right of doctors or even family members to decide when a terminal patient should die. It’s about the individual who is dying being able to decide on their own wellbeing, which includes whether to endure more pointless, degrading pain and suffering, or to claim that right to dignity even in death.

This article on euthanasia raises many legal philosophical questions. Was Fabricius’ J decision in the case a positivist decision or a progressive realist decision? In your answer you must discuss the theories of both legal philosophies and substantiate why you think the Judge’s decision was one or the other.

(20 marks)

1 Editorial “Matter of Life and Death” <http://mg.co.za/article/2015-05-07-editorial-matter-of-life-and-death> (Date of use: 15 June 2015).

ACADEMIC HONESTY DECLARATION

Declaration: Assignment 2

1. I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.
2. I declare that this assignment 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.

NAME:

SIGNATURE:

STUDENT NUMBER:

DATE:

13.2 Assignments for the second semester

SECOND SEMESTER: ASSIGNMENT 01
CLOSING DATE: 22 AUGUST 2016
UNIQUE NUMBER: 748633

The first assignment consists of twenty (20) multiple choice questions:

Question 1

When using the short form of referencing in the footnotes, the correct way to reference the page 27 of the Study Guide in the Bibliography is:

- (1) Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012) pg 27.
- (2) Kroeze and Smith *Legal Philosophy* 27.
Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).
- (3) Kroeze and Smith *Legal Philosophy*
Kroeze IJ and Smith SR *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).
- (4) Kroeze C *Legal Philosophy Only Study Guide for LJU4801* (Unisa Press Pretoria 2012).

Question 2

“One cannot imagine in South Africa today any legislative authority passing or sustaining laws which suppressed central beliefs and practices of Christianity, Islam, Hinduism or Judaism”.

The correct way to reference the above quote from Justice Sachs’ in the footnotes is:

- (1) *Prince v President of the Law Society of the Cape and others* 2002 2 SA 794 (CC) [160].
- (2) *Prince v President of the Law Society of the Cape and others* 2002 2 SA 794 (CC) [157].
- (3) *Prince v President* 2002 2 SA 794 (CC) [170].
- (4) *Prince v President of the Law Society of the Cape and others* 2002 2 SA 794 (CC) at 109.

Question 3

Choose the correct answer:

Natural Law can be defined as:

- (1) the idea that there is an immaterial, pre-political set of rules.
- (2) the idea that there is a real, pre-political, metaphysical set of rules.
- (3) the idea that there are political yet metaphysical rules.
- (4) the idea that metaphysical gods made political rules.

Question 4

The Greek Philosophers are:

- (a) Plato.
- (b) Aristotle.
- (c) Aquinas.
- (d) Socrates.

Choose the correct answer:

- (1) Only (a) and (b) are correct.
- (2) Only (a),(b) and (d) are correct.
- (3) All of the above are correct.
- (4) Only (a),(b) and (c) are correct.

Question 5

Plato's most famous publication is known as:

- (1) The Republic.
- (2) Leviathan.
- (3) *Lex Divina*
- (4) *Lex Naturalis*.

Question 6

Indicate whether the following statement is true or false.

The state according to Aquinas is part of God's design for the world.

- (1) True
- (2) False

Question 7

According to African legal philosophy:

- (a) Communal thought and collective thoughts were orally transferred.
- (b) A wise person is the custodian of the survival of his society.
- (c) Conflicts amongst members of a political community are destructive.
- (d) The community is always more important than the individual.

Choose the correct answer:

- (1) All of the above are correct.
- (2) Only (a),(b) and (c) are correct.
- (3) Only (a) and (d) are correct.
- (4) Only (b) and (d) are correct.

Question 8

Choose the correct answer:

Early modern legal thinking rose out of the era of

- (1) Renaissance, Reformation and World War One.
- (2) Renaissance, Reformation and Revolution.
- (3) Renaissance, Revolution and 9/11.
- (4) Renaissance, Reformation and the fall of the Western Roman Empire.

Question 9

A Hobbesian social contract can be described as:

- (a) Starting from a peaceful state of nature.
- (b) Starting from a violent state of nature.
- (c) Results in handing over self-governing power to the state.
- (d) Results in handing over self-governing power to an absolute sovereign.
- (e) Protects the right to revolt.

Choose the correct answer:

- (1) Only (a) and (c) are correct.
- (2) Only (b), (c) and (e) are correct.
- (3) Only (a), (c) and (e) are correct.
- (4) Only (b) and (d) are correct.

Question 10

Indicate whether the following statement is true or false.

According to the social thesis laws are universal and forever.

- (1) True
- (2) False

Question 11

The radical realists attempted:

- (1) to deconstruct the law.
- (2) a political criticism of positivism.
- (3) to make the law more scientific.

Question 12

Indicate which option best completes the sentence.

The progressive realists believed that...

- (1) law is best analysed from an abstract approach.
- (2) judges make policy when applying the law.
- (3) legal answers follow automatically from legal doctrine.
- (4) law is a science, but not a social science.

Question 13

Kayamandi Town Committee v Mkhwaso 1991 2 SA 630 (C) is an example of:

- (1) a realist and sociological approach.
- (2) an empirical, rationalist approach.
- (3) a feminist approach.
- (4) deconstruction.

Question 14

The characteristics of late modern thinking are:

- (a) rationalism plus morality.
- (b) rationalism plus rational values.
- (c) scientific worldview plus normative arguments.
- (d) individualism plus collective rational deliberation about values.

Choose the correct answer:

- (1) (a) and (b) are correct.
- (2) (a) and (b) are incorrect.
- (3) (b), (c) and (d) are correct..
- (4) (a) is incorrect, (b) is correct.

Question 15

Indicate which option best completes the sentence.

For Ronald Dworkin, constructive interpretation means...

- (1) reading legal rules in a manner which makes them the best legal rules that they can be.
- (2) reading legal rules in a manner which places primary focus on policy considerations.
- (3) reading legal rules in a manner which places primary focus on political interests of the state.
- (4) reading legal rules in a manner which incorporates values through metaphysical thinking.

Question 16

Which statement pertaining to postmodern legal thinking is correct?

- (1) Postmodernism can be seen as a resistance to formalism.
- (2) Postmodernists advocate interpretation that is based on universal truths.
- (3) Postmodernism can be seen as a return to essentialism.
- (4) Postmodernism can be seen as a return to metaphysics.

Question 17

Choose the correct option below.

- (1) CLS scholars (Crits) employ the concept of false consciousness to illustrate how the law is a-political in nature.
- (2) CLS scholars (Crits) approach the law as an ideology that entrenches and justifies unfair social constructs.
- (3) Through the style of legal scholarship called “trashing”, CLS scholars (Crits) illustrate that meaning is not inherent in the language we use.
- (4) For CLS Scholars (Crits), the fundamental contradiction of the law refers to the individual being subject *to* the law, but not a subject *of* the law.

Question 18

The decision in *President of the Republic v Hugo* 1997 (4) SA 1 (CC) can be described as

- (a) Non-essentialist feminism.
- (b) Essentialist feminism.
- (c) Sameness feminism.
- (d) Difference feminism.

Choose the correct answer:

- (1) Only (a) and (c) are correct.
- (2) Only (b) is correct.
- (3) Only (b) and (d) are correct.
- (4) Only (c) is correct.

Question 19

The law as it is and the law as it ought to be can be described as

- (1) Positivism and Natural Law.
- (2) Positivism and Dworkin.
- (3) Positivism and the Realists.
- (4) All of the above.

Question 20

Your lecturers for Legal Philosophy (LJU4801) are:

- (1) Professor Kroeze and Mrs Smith
- (2) Professor Kroeze and Professor Magda Slabbert
- (3) Mrs Smith and Professor Magda Slabbert
- (4) Dr Seuss and the tooth fairy.

SECOND SEMESTER: ASSIGNMENT 02
CLOSING DATE: 12 SEPTEMBER 2016
UNIQUE NUMBER: 664611

ALL ASSIGNMENTS MUST CONTAIN THE FOLLOWING DOCUMENT, SIGNED BY YOU AS THE AUTHOR OF THE ASSIGNMENT

The declaration should be included with a written assignment, typed at the end of an assignment or scanned together with an assignment as a PDF. Please note that when you sign this you are acknowledging that you know what plagiarism is, how plagiarism is committed and what disciplinary action may be taken against students who commit plagiarism.

Instructions for the assignment

1. Read the following article and answer the question below.
2. Answers must take the format of a **professional typed essay with correct referencing**.
 - 2.1. **Essays which are not correctly referenced will be penalised**. The School of Law referencing style is detailed in Tutorial Letter 301.
 - 2.2. Essays which use **bullets or numbering will be penalised**.
 - 2.3. Essays which use SMS speak, abbreviations, incorrect grammar or have not been edited will be penalised.
 - 2.4. If you **plagiarise** in any way, your essay **will be penalised** and disciplinary action may be taken against you.
3. Marks are allocated for knowledge of the study material, application to the scenario, language and referencing. Refer to the mark allocation form attached as annexure A.
4. You have to attach the Academic Honesty Declaration.

Are you a #distractinglysexy female in the workplace? These lady scientists are.¹



(Picture: Wikimedia Commons)

While at a conference in Seoul, Tim Hunt, a British Nobel Prize-winning scientist claimed that women and men shouldn't work in science labs together. ...

"Let me tell you about my trouble with girls. Three things happen when they are in the lab: you fall in love with them, they fall in love with you, and when you criticise them they cry."

....

Feminist mag The Vagenda decided to respond to Hunt's ignorant, sexist and dumb comments with a hashtag, #distractinglysexy.

...

Here are some of the best #distractinglysexy pics women have shared.

Sonja Vernes @Sonja_Vernes Jun 11

I made it through these brain dissections without falling in love or crying. Phew! #distractinglysexy #TimHunt pic.twitter.com/q5PVkM9zCx



¹ Pearl B "Are you a #distractinglysexy female in the workplace? These lady scientists are." <http://www.dailyplanet.co.za/article/are-you-one-of-those-distractinglysexy-females-in-the-workplace/> (Date of use: 15 June 2015).

Nobel Prize winner Tim Hunt appears to be providing an essentialist view of female scientists, whereas the #distractinglysexy campaign puts forward a non-essentialist view of female scientists. Discuss both the essentialist and the non-essentialist perspective of women and provide a substantiated opinion on whether Tim Hunt's comments are justified.

(20 marks)

ACADEMIC HONESTY DECLARATION**Declaration: Assignment 2**

1. I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.
2. I declare that this assignment 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.

NAME:

SIGNATURE:

STUDENT NUMBER:

DATE:

Annexure A

The following mark allocation form will be used for marking the second assignment.

Mark Allocation – LJU4801		
Section	Out of	Mark
Presentation	1	
Content Marks may be awarded for content (in your own words with references) for the following: Introduction Discussion Application Case law Examples Conclusion Language Note that if the content is not your own: i.e. it has not been referenced or has been cut and pasted from someone else's work marks cannot be awarded for content. Note that not all sections are always relevant.	14	
Footnotes	3	
Bibliography	2	
Total	20	

Annexure B

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.