

**IMPORTANT INFORMATION:**

- **READ THIS TUTORIAL LETTER IMMEDIATELY!!**
- **SEMESTER MODULE!!**

**COLLEGE OF LAW**

**SCHOOL OF LAW: DEPARTMENT OF  
JURISPRUDENCE**

**PROFESSIONAL ETHICS (LJU413J)**

**Tutorial Letter 101/2010**

**First and Second Semester**

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## 1 A WORD OF WELCOME

Welcome to the module in Professional Ethics (LJU413J) offered by the Department of Jurisprudence. We hope you will find it interesting and rewarding.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

Please read *Tutorial Letter 301* in combination with Tutorial Letter 101 as it gives you an idea of generally important information when studying at a distance and within a particular College.

In this tutorial letter, you will find the assignments for both semesters and instructions on the preparation and submission of the assignments.

This tutorial letter also provides all the information you need with regard to the prescribed study material and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

Right from the start 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.

## 2 TUITION RATIONALE

While it is accepted that future lawyers should have adequate levels of expertise and skill, the importance of professional ethics is also increasingly being recognised by the legal profession. This course is therefore aimed at including and developing the moral character of future lawyers. When you have completed this module, we hope that you will be properly equipped with the foundational competence necessary for ethical decision-making in all matters relating to the practice of law. Hopefully you will also aspire towards a high set of ethical values which will make you count among the exceptional members of the legal profession.

### 3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are Mr Freddy Mnyongani and Prof Magda Slabbert.

All **written enquiries** that are NOT of a purely administrative nature but are about the **contents of this module** should be directed to:

The Module Leader (LJU413J)  
Department of Jurisprudence  
PO Box 392  
Unisa  
0003

All **telephonic enquiries** that are NOT of a purely administrative nature but are **about the contents of this module** should be directed to:

Mr FD Mnyongani (012) 429-2941  
(Module leader) International: + 27 12 429-2941  
mnyonfd@unisa.ac.za

Prof M Slabbert (012) 429-8829  
slabbm@unisa.ac.za  
International: + 27 12 429-8829  
Fax (012) 429-3442  
International: +27 12 429-3442

Please have your study material at hand when you contact us about the content of the module.

Feel welcome to **visit us** to discuss any queries or problems. However, please **make an appointment**. Our offices are on the **4<sup>th</sup> floor of the Cas van Vuuren Building, Main Campus, Muckleneuk Ridge, Pretoria.**

Mr FD Mnyongani Cas van Vuuren 4-91  
Prof M Slabbert Cas van Vuuren 4-96

### Communication with the University

If you need to contact the University about matters not related to the content of this module, please consult the publication ***Your Service Guide @ Unisa*** which you received with your study material. This booklet contains information on how to contact the University (eg to whom you may write, important telephone numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you call the University.

Please note that all administrative enquiries should be directed to the **Unisa Contact Centre**. Enquiries will then be channeled to the correct department. The details are as follows:

- |                              |                        |
|------------------------------|------------------------|
| • Calls (RSA only)           | 0861 670 411           |
| • International Calls        | +27 11 670 9000        |
| • Fax number (RSA)           | 012 429 4150           |
| • Fax number (international) | +27 12 429 4150        |
| • E-mail                     | study-info@unisa.ac.za |

## 4 STUDENT SUPPORT SYSTEM

### 4.1 GENERAL

For information on the various student support systems and services available at Unisa (eg student counseling, tutorial classes, language support), please consult the publication ***Your Service Guide @ Unisa***.

### 4.2 CONTACT WITH FELLOW STUDENTS

#### 4.2.1 Study groups

It is advisable to form study groups and to have contact with fellow students. The addresses of students in your area may be obtained from the following department:

Department of Undergraduate Student Affairs  
PO Box 392  
UNISA  
0003

You can also contact the Unisa Contact Centre at 0861 670 411 (only RSA) or +27 11 670 9000 (international calls).

### 4.2.2 *myUnisa*

The *myUnisa* learner management system is Unisa's new virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the computer and the Internet.

To go to the *myUnisa* website, start at the main Unisa website: <http://www.unisa.ac.za> and then click on the "Login to *myUnisa*" link on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication ***Your Service Guide @ Unisa*** which you received with your study material for more information on *myUnisa*.

## 5 STUDY MATERIAL

### 5.1 INVENTORY

You will receive an inventory letter containing information about your tutorial matter. Also see the booklet entitled ***Your Service Guide @ Unisa***.

Check the study material you received against the inventory letter. You should have received all the items specified in the inventory, unless there is a statement like "out of stock" or "not available". If any item is missing, follow the instructions on the back of the inventory letter without delay.

**PLEASE NOTE:** Your lecturers **CANNOT** help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only) or +27 11 670 9000 (international calls).

### 5.2 STUDY MATERIAL

Study material consists of the following:

- \* Tutorial letters which you will receive during the semester
- \* One study guide
- \* Prescribed articles, extracts from books and court cases

Students who have access to the Internet can view the study guides and tutorial letters for the modules for which they are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>.

### 5.2.1 Tutorial letters

Apart from Tutorial Letter 101/2010 you will receive other tutorial letters for LJU413J during the semester.

**Tutorial letters are part of your study material for assignment and examination purposes. Read and reread each tutorial letter; keep it for reference purposes, and study it again.**

**PLEASE NOTE: TUTORIAL LETTERS will be dispatched to students as soon as they are available. The Department of Dispatch is responsible for that.**

### 5.2.2 Prescribed study material

There is **no prescribed handbook** for Professional Ethics. This means that you do not need to purchase any additional books. You must only study your **study guide and tutorial letters as well as your prescribed material**.

## 6 ASSIGNMENT: GENERAL INFORMATION

### 6.1 ASSIGNMENTS

Assignments are seen as part of the learning material for this module.

### 6.2 GENERAL

**PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls).**

Students may submit written assignments either by post or electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure ***Your Service Guide @ Unisa***.

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 left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

### 6.3 CLOSING DATES FOR ASSIGNMENTS

The closing dates for the submission of the compulsory assignments are:

#### First Semester:

- **5 March 2010** for the **first semester's first assignment** (Multiple choice)
- **1 April 2010** for the **first semester's second assignment** (Essay type question)

#### Second Semester:

- **13 August 2010** for the **second semester's first assignment** (Multiple choice)
- **23 September 2010** for the **second semester's second assignment** (Essay type question)

### 6.4 COMMENTARY ON ASSIGNMENTS

You will receive the correct answers automatically for multiple-choice questions. The commentaries on the written compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

## 6.5 ASSESSMENT OF ASSIGNMENTS

### PLEASE NOTE:

Although students may work together when preparing assignments, each student must complete and submit his or her own individual assignment. In other words, each student must submit his or her own work.

Keep in mind that with regard to written assignments, it is unacceptable for students to submit identical assignments on the basis that they worked together. This will amount to plagiarism and none of these assignments will be marked.

Furthermore, these students may be penalised or subjected to disciplinary proceedings of the University.

Please also remember to add a bibliography with your written assignment.

## 7 EXAMINATION

### 7.1 EXAMINATION ADMISSION

Only students who submit the **first** compulsory assignment before or on the date of submission will be admitted to the examination, **regardless of the mark obtained for the assignment**. If you fail to submit your first assignment, you will not be permitted to sit for the examination.

**Both assignments will be taken into account for your year mark. You need to obtain at least 40% in the examination before your year mark will be taken into account.**

### 7.2 HOW WILL THIS WORK IN PRACTICE?

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

### 7.3 EXAMINATION PERIOD

LJU413J is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2010 and the supplementary examination will be written in October/November 2010. If you are registered for the second semester you will write the examination in October/November 2010 and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

#### 7.4 EXAMINATION PAPER

You will write a two-hour examination paper that counts 100 marks. You will receive more information on the format of the examination paper in the follow-up tutorial letter that will also contain the commentaries on the assignments.

There **will be no** multiple choice questions in the examination.

#### 7.5 PREVIOUS EXAMINATION PAPERS

You may expect that examination questions will be similar to the questions asked in the activities in your study guide and in the essay type assignments.

## 8 ASSIGNMENTS

Please note that this tutorial letter contains the following assignments:

- (1) **Assignment 01 and assignment 02 for first-semester students which must be submitted before or on the dates of submission 5 March 2010; 1 April 2010.**
- (2) **Assignment 01 and assignment 02 for second-semester students which must be submitted before or on the dates of submission 13 August 2010; 23 September 2010.**

Please note that the method of assessing multiple choice question assignments is different from that of assessing essay type questions. **Excelling in the multiple choice assignment does not necessarily guarantee that you will do well in the essay type question assignment. Remember that there will be no multiple choice questions in the exam.**

**ASSIGNMENT 01**

**ASSIGNMENT FOR FIRST SEMESTER STUDENTS ONLY**

**FIRST SEMESTER STUDENTS ONLY**

**UNIQUE NUMBER: 325664**

**SUBMISSION DATE: 5 March 2010**

**ASSIGNMENT 01**

**QUESTION 1**

In *Rosemann v General Council of the Bar of South Africa* 2004 (1) SA 568 (SCA) it was argued that:

- (1) a person using *cannabis* is not a fit and proper person for the legal profession
- (2) the division of work between advocates and attorneys and the referral rule was irrational
- (3) a person guilty of a severe crime is not a fit and proper person for the legal profession
- (4) the division of work between attorneys and advocates justifiably violates section 2 of the Constitution

**QUESTION 2**

Who bears the burden of proof in the fit and proper person test?

- (1) the court
- (2) the bar of advocates
- (3) the law society
- (4) the applicant

**QUESTION 3**

Disciplinary procedures regarding lawyers are *sui generis* in nature. This means:

- (1) a judge has to act as presiding officer
- (2) evidence not admissible in an ordinary civil case would also be inadmissible
- (3) they are not subject to all the strict rules of the ordinary civil process
- (4) the Bar of Advocates have to institute action

**QUESTION 4**

Objectivity requires:

- (1) that no irrelevant considerations should be brought to bear upon a lawyers' judgment
- (2) logical thinking that takes into consideration all issues
- (3) emotional considerations
- (4) absolute truthfulness

**QUESTION 5**

The claim of privilege:

- (1) belongs to the attorney
- (2) belongs to the the presiding officer
- (3) belongs to the client
- (4) should not be used in criminal cases

**QUESTION 6**

"This application is significant in that, apart from involving the name of one of the greatest legal giants and visionaries this country has ever known, it is the first one to be brought in terms of this Act."

The above statement was made in:

- (1) *Rice v Society of Advocates of South Africa (Witwatersrand Division)* 2004 (5) SA 537 (WLD)
- (2) *Society of Advocates of South Africa (Witwatersrand Division) v Fischer* 1966 (1) SA 133 (T)
- (3) *Prince v President, Cape Law Society* 2000 (3) SA 845 (SCA)
- (4) *Incorporated Law Society v Wookey* 1912 AD 623

**QUESTION 7**

The duty to confidentiality does not apply to:

- (1) Communication where a client admits to having committed a crime
- (2) Communication where a client intends to commit a crime
- (3) Communication made with a view to litigation
- (4) Communication made by a client seeking legal advice

**QUESTION 8**

“It is better to kill one person in order to save nineteen others, than to have all twenty people killed”.

Which ethical theory below will agree with this statement?

- (1) Rule governed theory of ethics
- (2) Feminist ethics
- (3) Virtue ethics
- (4) Utilitarian theory of ethics

**QUESTION 9**

When considering whether or not to strike Mandela off the roll, the court in the *Mandela* case followed:

- (1) The character test and struck Mandela off the roll
- (2) The character test and did not strike Mandela off the roll
- (3) The duty to obey the law test and struck Mandela off the roll
- (4) The duty to obey the test and did not strike Mandela off the roll

**QUESTION 10**

While preparing for what is promising to be a ground breaking case both financially and in terms of your career path, you come across a case that is potentially detrimental to your client's case.

As an officer of the court, you will:

- (1) Ignore the potentially detrimental case and hope that no one discovers it
- (2) Twist the potentially detrimental case to ensure that it supports your client's case
- (3) Bring the potentially detrimental case to the attention of the court
- (4) Bring the potentially detrimental case to the opposing side's attention

**TOTAL: [10]**

**ASSIGNMENT 02****ASSIGNMENT FOR FIRST SEMESTER STUDENTS ONLY****ONLY FOR FIRST SEMESTER STUDENTS****SUBMISSION DATE: 1 April 2010****ASSIGNMENT 02**

Do you think that in considering whether legal practitioners are fit to practice law the seriousness of the crimes they have been convicted of (damage caused, persons killed or injured) plays a role (or should play a role)? Substantiate your view by referring to case law. (10)

Your completed assignment should be no longer **than three (3)** pages.

**NO ASSIGNMENTS MAY BE SUBMITTED BY E-MAIL, FAX, FLOPPY DISK OR STIFFY!** All assignments must be submitted in typed, printed or hand-written format.

Please note the submission dates for assignments. **No extensions will be granted.**

**ASSIGNMENT 01**

**ASSIGNMENT FOR SECOND SEMESTER STUDENTS ONLY**

**FOR SECOND SEMESTER STUDENTS ONLY**

**UNIQUE NUMBER: 182514**

**SUBMISSION DATE: 13 August 2010**

**ASSIGNMENT 01**

**QUESTION 1**

Defamatory statements by lawyers in court are allowed:

- (a) Only if such statements promote his or her client's case
- (b) Only if there are reasonable grounds for making such statements
- (c) Only if such statements are not offensive
- (d) Only if such statements do not create an unfavourable image with the general public

Choose one of the following:

- (1) Statements (a) and (b) are correct
- (2) Statements (b) and (c) are correct
- (3) Statements (a) and (d) are correct
- (4) Statements (b) and (d) are correct

**QUESTION 2**

“This application is significant in that, apart from involving the name of one of the greatest legal giants and visionaries this country has ever known, it is the first one to be brought in terms of this Act.”

The above statement was made in:

- (1) *Society of Advocates of South Africa (Witwatersrand Division) v Fischer* 1966 (1) SA 133 (T)
- (2) *Rice v Society of Advocates of South Africa (Witwatersrand Division)* 2004 (5) SA 537 (WLD)
- (3) *Prince v President, Cape Law Society* 2000 (3) SA 845 (SCA)
- (4) *Incorporated Law Society v Wookey* 1912 AD 623

**QUESTION 3**

Wasserstrom argues that:

- (1) Role-differentiated behaviour is justified for lawyers defending criminals and in certain civil matters
- (2) Role-differentiated behaviour is not justified for lawyers defending criminals and in certain civil matters
- (3) Role-differentiated behaviour is justified for lawyers defending criminals
- (4) Role-differentiated behaviour is not justified for lawyers defending criminals

**QUESTION 4**

Who bears the burden of proof in the fit and proper person test?

- (1) the court
- (2) the bar of advocates
- (3) the law society
- (4) the applicant

**QUESTION 5**

In *Rosemann v General Council of the Bar of South Africa* 2004 (1) SA 568 (SCA) it was argued that:

- (1) a person using *cannabis* is not a fit and proper person for the legal profession
- (2) the division of work between advocates and attorneys and the referral rule was irrational
- (3) a person guilty of a severe crime is not a fit and proper person for the legal profession
- (4) the division of work between attorneys and advocates justifiably violates sec 22 of the Constitution

**QUESTION 6**

“Intolerance may come in many forms. At its most spectacular and destructive it involves the use of power to crush beliefs and practices considered alien and threatening. At its more benign it may operate through a set of rigid mainstream norms which do not permit the possibility of alternative forms of conduct”.

The above statement was made by:

- (1) Sachs J in *Prince v President, Cape Law Society* 2002 (2) SA 794 (CC)
- (2) Hefer J in *Prince v President, Cape Law Society* 2000 (3) SA 845 (SCA)
- (3) Ngcobo J in *Prince v President, Cape Law Society* 2002 (2) SA 794 (CC)
- (4) Mthiyane AJA in *Prince v President, Cape Law Society* 2000 (3) SA 845 (SCA)

**QUESTION 7**

Which one of the following ethical theories celebrates differences and accommodates the uniqueness of each person?

- (1) Utilitarian theory of ethics
- (2) Rule-governed theory of ethics
- (3) Feministic Ethics
- (4) Postmodern ethics

**QUESTION 8**

When considering whether or not to strike Maqubela off the roll, the court in the *Maqubela* case followed:

- (1) The character test and struck him off the roll
- (2) The character test and did not strike him off the roll
- (3) The duty to obey the law test and struck him off the roll
- (4) The duty to obey the test and did not strike him off the roll

**QUESTION 9**

Aristotle defines virtue as:

- (1) Excellence (*arête*)
- (2) A mean between two vices
- (3) A political animal (*zoon politicon*)
- (4) A life devoted to public-political affairs

**QUESTION 10**

Which of the following statements is incorrect?

An attorney who was struck off the roll can be reinstated if the court is satisfied that:

- (1) The applicant has genuinely reformed
- (2) A considerable time has elapsed
- (3) The applicant will act honourably in future
- (4) The applicant has shown remorse

**TOTAL: [10]**

**ASSIGNMENT 02****ASSIGNMENT FOR SECOND SEMESTER STUDENTS ONLY**

**FOR SECOND SEMESTER STUDENTS ONLY**

**SUBMISSION DATE: 23 September 2010**

**ASSIGNMENT 02**

Rules of professional conduct in South Africa include that lawyers should respect the legal order and obey it.

Discuss whether lawyers may take part in civil disobedience and refer to relevant case law. (10)

Your completed assignment should be no longer than **three (3)** pages.

**NO ASSIGNMENTS MAY BE SUBMITTED BY E-MAIL, FAX, FLOPPY DISK OR STIFFY!** All assignments must be submitted in typed, printed or hand-written format.

Please note the submission dates for assignments. **No extensions will be granted.**

We hope that you will enjoy this module and will have success with your studies.

Kind regards

**MR FD MNYONGANI  
PROF M SLABBERT**

**PRETORIA**