

Tutorial Letter 101/3/2020

Family Law

PVL2601

Semesters 1 and 2

Department of Private Law

This tutorial letter contains important information
about your module.



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Dear Student

1 INTRODUCTION

We are pleased to welcome you to this module in which you will study South African family law. We hope that you will find it interesting and rewarding. We shall do our best to assist you in making your Family Law studies successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

Family law is an important and living part of your study of private law. It requires not only reading, but also a good deal of thought to master this module. Please consult us with regard to any problems or difficulties you may encounter.

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 or addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for the first and second semester, assessment criteria as well as 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.

We have also included frequently asked questions to answer some of your general and administrative related questions.

Right from the start we would like to point out that you must read all the tutorial letters you receive during this semester immediately and carefully, as they always contain important and, sometimes, urgent information.

Some of this study material may not have been available when you registered. Study material that was not available when you registered will be posted to you as soon as possible, but will also be made available on *myUnisa*.

The *myUnisa* learner management system is Unisa's virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the internet. Students 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" to their lecturers and fellow students about their studies and the challenges they encounter, and participate in online discussion forums.

Please note that important information regarding your studies at Unisa is contained in the document *Study @ Unisa* that you received with your tutorial matter. Information contained in this document is NOT repeated in this tutorial letter. You should therefore familiarise yourself with the content of this document. It can be downloaded from www.unisa.ac.za/brochures/studies.

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

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

2 PURPOSE AND OUTCOMES

2.1 Purpose

In this module we cover the basic principles of family law. Owing to the fact that the module is pitched at second-year level, it has been structured to suit the unique educational needs of students still new to this field.

2.2 Outcomes

The learning outcomes and assessment criteria for this module are the following:

Outcome 1:

Gain knowledge, skills, attitudes and competencies to analyse legal material (the Constitution, legislation, case law and academic opinion) relating to family law.

Assessment criteria:

- Legal problems and issues relating to family law are identified in real or simulated factual scenarios.
- Terms, rules, concepts, established principles and theories relating to family law are understood.
- An awareness of how family law relates to areas such as law of persons, law of succession, property law and the law of contract is demonstrated.

Outcome 2:

Critically evaluate legal material (the Constitution, legislation, case law and academic opinion) relating to family law.

Assessment criteria:

- Legal material relating to family law is critically analysed and synthesised.

Outcome 3:

Formulate legal arguments relating to family law.

Assessment criteria:

- Information is presented and communicated reliably and coherently in professionally accepted formats using basic information technology.
- Legal text is skilfully used to substantiate arguments and support solutions for specific family-law issues.

Outcome 4:

Apply knowledge to practical family-law problems.

Assessment criteria:

- Well-defined problems relating to family law are solved using correct procedures and appropriate evidence.
- Legal text is skilfully used to substantiate arguments and support solutions for specific family-law issues.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

Prof J Heaton (first and second semester)

Office: Cas van Vuuren 6-04

Telephone number: 012 429 8435

E-mail: heatoj@unisa.ac.za

Prof P Bakker (second semester only)

Office: Cas van Vuuren 6-08

Telephone number: 012 429-8570

E-mail: bakkep@unisa.ac.za

Please note: All queries that are not of a purely administrative nature but are about the contents of this module should be directed to us. Please have your study material with you when you contact us.

You may send your queries to us via **e-mail**. **This is the preferred mode of communication with your Family Law lecturers.** You may use either our personal e-mail addresses supplied above, or the **e-mail link** (*course contact*) provided on the **myUnisa website** at <http://my.unisa.ac.za>.

You may also **phone** us at the numbers given above.

Letters should be sent to:

The Lecturer (PVL2601)
Department of Private Law
PO Box 392
UNISA
0003

Please note: Letters to lecturers may not be enclosed with or inserted into assignments.

You are further welcome to **visit** us to discuss any queries about or problems with the module. **However, please make an appointment beforehand, otherwise you run the risk of the lecturer not being available to see you.** Our offices are on the 6th floor of the Cas van Vuuren Building, Main Campus, Muckleneuk Ridge, Pretoria.

3.2 Department

Physical location:	Cas van Vuuren building 6 th floor
Departmental secretary:	Cas van Vuuren 6-45
Contact number:	012 429 8418
Postal address:	Department of Private Law PO BOX 392 UNISA 0003

The Department of Private Law is part of the College of Law.

College of Law student enquiries

Linda Boyi (Supervisor) 012 429 4105 boyipl@unisa.ac.za
 012 429 4718
 012 429 2178
 012 429 4860
 012 429 2176

3.3 University

If you need to contact the University's administrative departments about matters not related to the content of this module, **please consult the publication *Study @ Unisa*** available at www.unisa.ac.za/brochures/studies. This booklet contains information on how to contact the University (e.g. to whom you may write for different queries, important telephone numbers and e-mail addresses, sms numbers and details of the times certain facilities are open).

Physical address:

University of South Africa
 Preller Street
 Muckleneuk
 PRETORIA

Postal address:

University of South Africa
 PO Box 392
 UNISA
 0003

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

4 RESOURCES

4.1 Study guide

You will receive one study guide for this module. You must study this study guide very carefully. It guides you through your prescribed textbook. At the beginning of the study guide you will find detailed instructions on how to use it.

4.2 Tutorial letters

Apart from Tutorial Letter 101, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration, but will be posted to you as soon as they are available or needed (for instance, for feedback on assignments).

If you have access to the internet, you can view the study guides and the tutorial letters for the modules for which you are registered on the University's online campus, *myUnisa*, at <https://www.unisa.ac.za/sites/myunisa/>.

Tutorial letters are part of your study material for assignment and examination purposes. They are just as important as the study guide itself. Read and reread each tutorial letter and keep it for reference purposes. Tutorial letters which contain additional study material must be regarded as part of your study material for study and examination purposes.

4.3 Prescribed book

You have one prescribed textbook for this module:

Heaton J and Kruger H *South African Family Law* 4th edition (2015) LexisNexis Durban

You have to purchase the textbook and study it in conjunction with your study guide.

Please refer to the list of official booksellers and their addresses in the *Study @ Unisa* brochure. The prescribed book can be obtained from the University's official booksellers. If you have difficulty locating your book at these booksellers, please contact the Prescribed Book Section at 012 429-4152 or e-mail vospresc@unisa.ac.za.

4.4 Recommended books

There are no recommended books for this module.

4.5 Electronic reserves (e-reserves)

There are no electronic reserves for this module.

4.6 Prescribed cases

Reported judgments are an important source of our knowledge of the law as applied by the courts. There are four prescribed cases for this module: *Zulu v Zulu* 2008 (4) SA 12 (D); *Wijker v Wijker* 1993 (4) SA 720 (A); *Kooverjee v Kooverjee* 2006 (6) SA 127 (C) and *Volks v Robinson* 2005 (5) BCLR 446 (CC). **Please note that you only have to read the editor's summary of *Volks v Robinson* and not the whole case.**

The prescribed cases can be downloaded from Saflii or the Unisa Library e-resources.

- To download the cases from Juta Law Online go to the Unisa Library site. Click on "Find e-resources" under the heading "Search the Library". Accept the terms and conditions. Click on the "A to Z" tab for the alphabetical list of electronic sources or on the "Publishers" tab and click "J". Click on "Juta Law Online". Click on the drop down list "Choose Advanced Search Form(s)". Search for the relevant case. The first three prescribed cases are available on this database.
- To download cases from LexisNexis (South African Law) follow the same steps indicated under the point above but click on "L" in the "A to Z" list or the "Publishers" list. Click on "LexisNexis (South African Law)". Click on the "Focus Search" dropdown list. Click on "Law Report". Search for the relevant case. *Volks v Robinson* is available on this database.
- To download the cases from Saflii go to www.saflii.org. Click on "Search" in the top tabs. Enter the case name in the "Enter search query" block on the left-hand side of the screen. Select the correct court from the list of courts that appears on the right side of the screen. Then click on "Search". All the prescribed cases, except for *Kooverjee v Kooverjee*, are available on Saflii.

You must read the prescribed cases in conjunction with your prescribed material. The prescribed cases are listed in the relevant study unit in the study guide under the heading "Prescribed Learning Material". A thorough knowledge of the prescribed cases is essential for assignment and examination purposes.

Where there is no indication of any cases to be studied for a certain study unit, it means that there are no cases for that study unit that need to be downloaded and studied.

You should, however, always bear in mind that the cases that are discussed in your study guide and prescribed textbook are also important. They must be studied in the manner in which they appear in your study guide and textbook. Decisions by our courts are an important source of authority. If a case dealing with a particular aspect is discussed in your study guide or in the prescribed sections of your textbook we expect you to refer to that case in your answer to assignments and examination questions other than multiple choice or true/false questions, even if that case is not one of your prescribed cases.

4.7 Library services and resources

The Unisa Library offers a range of information services and resources:

- for detailed Library information go to <http://www.unisa.ac.za/sites/corporate/default/Library>
- for research support and services (e.g. personal librarians and literature search services) go to <http://www.unisa.ac.za/sites/corporate/default/Library/Library-services/Research-support>

The Library has created numerous Library guides: <http://libguides.unisa.ac.za>

Recommended guides:

- Request and download recommended material: <http://libguides.unisa.ac.za/request/request>
- Postgraduate information services: <http://libguides.unisa.ac.za/request/postgrad>
- Finding and using Library resources and tools: http://libguides.unisa.ac.za/Research_skills
- Frequently asked questions about the Library: <http://libguides.unisa.ac.za/ask>
- Services to students living with disabilities: <http://libguides.unisa.ac.za/disability>

Important contact information:

- <https://libguides.unisa.ac.za/ask> - Ask a Librarian
- Lib-help@unisa.ac.za - technical problems accessing Library online services
- Library-enquiries@unisa.ac.za - general Library related queries
- Library-fines@unisa.ac.za - for queries related to Library fines and payments

5 STUDENT SUPPORT SERVICES

5.1 General

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes and language support), please consult the publication, *Study @ Unisa*, which you received with your study material. The *Study @ Unisa* brochure is available on myUnisa: www.unisa.ac.za/brochures/studies

This brochure has all the tips and information you need to succeed at distance learning and, specifically, at Unisa.

5.2 *myUnisa*

The *myUnisa* learner management system is Unisa's virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through 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 <https://my.unisa.ac.za>.

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

5.3 E-tutor system

Unisa offers online tutorials (e-tutoring) to students registered for certain modules at NQF levels 5, 6 and 7. This means that certain qualifying first year, second year and third year modules are affected. You will be informed via *myUnisa* whether e-tutors will be appointed for Family Law this semester. If so, you will be allocated to a group of students with whom you will be interacting during the tuition period as well as an e-tutor who will be your tutorial facilitator. Thereafter you will receive an sms informing you about your group, the name of your e-tutor and instructions on how to log onto *myUnisa* in order to receive further information on the e-tutoring process.

Online tutorials are conducted by qualified e-tutors who are appointed by Unisa and are offered free of charge. All you need to be able to participate in e-tutoring is a computer with internet connection. If you live close to a Unisa regional centre or a Telecentre contracted to Unisa, please feel free to visit any of these to access the internet. E-tutoring takes place on *myUnisa* where you are expected to connect with other students in your allocated group. It is the role of the e-tutor to guide you through your study material during this interactive process. For you to get the most out of online tutoring, you need to participate in the online discussions that the e-tutor will be facilitating.

6 STUDY PLAN

You will only be able to master this module if you start studying it early in the semester and if you study every day. For some study units you will need only a few days, while you will have to spend more time on others. Please do not underestimate the scope of this module. Use your *Study @ Unisa* brochure for general time management and planning skills.

7 ASSESSMENT

7.1 Assessment plan

Your mark will comprise a year mark that will be gained from one written assignment (10%), one multiple-choice assignment (10%) and a written examination of two hours (80%). First examiners set and assess the assignments and examination. In the case of examinations, second examiners are used to moderate questions, the marking process and the marked scripts. Second examiners also assist in taking oral examinations. All examiners are academics or specialists in the field.

7.2 General information regarding assignments

Assignments are part of the learning material for this module. There are three assignments for this semester: Assignment 01 is a written assignment which must be submitted; Assignment 02 is a multiple-choice assignment which must be submitted; and Assignment 03 is a self-evaluation assignment, which must NOT be submitted.

The assessment criteria provided for the longer question(s) of the written assignment will help you to understand what is required of you. Keep this in mind when doing the assignment.

The commentary on all the assignments will be sent to all students registered for this module in Tutorial Letter 201, and not only to those students who submitted Assignments 01 and 02. As soon as you have received the commentary, please check your answers. The assignments and the commentary on these assignments constitute an important part of your study material.

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

7.3 Assignment numbers

7.3.1 General assignment numbers

Assignments are numbered consecutively per module, starting from 01.

There are three assignments for this module:

- Assignment 01 is a written assignment which consists of several questions.
- Assignment 02 is a multiple-choice assignment which consists of 10 questions.
- Assignment 03 is a self-evaluation assignment which consists of a past examination paper. This assignment must **NOT** be submitted.

7.3.2 Unique assignment numbers

You are provided with a unique assignment number for each of the assignments that you have to submit (Assignment 01 and Assignment 02). Please remember to write down the unique assignment number for Assignment 01 on your assignment cover and the unique assignment number for Assignment 02 on the mark-reading sheet. The unique assignment number is provided at the top of each assignment in **7.6** below.

7.4 Assignment due dates

- Semester 1: **13 March** (Assignment 01) and **09 April** (Assignment 02).
- Semester 2: **20 August** (Assignment 01) and **23 September** (Assignment 02).

Please note:

- Assignment 03 must **NOT** be submitted.
- Assignments 01 and 02 for the first semester of 2020 differ from Assignments 01 and 02 for the second semester. Please ensure that you do and submit the correct assignments.
- Assignment 03 is the same for both semesters.

7.5 Submission of assignments

Assignments can be:

- Submitted via *myUnisa* (online)
- placed in a Unisa assignment box
- posted to Unisa
- submitted via courier (there is no charge if the assignment is submitted in an official Unisa envelope at the service point of the university's official couriers – visit www.unisa.ac.za/assignments for more information)
- submitted via Unisa's mobile MCQ app (multiple-choice assignments only)

Please do not submit the same assignment via two separate channels (eg *myUnisa* and the postal service).

Assignments may **NOT** be submitted by fax or **e-mail**.

Each assignment for each module has to be posted separately. Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

However, we advise you not to submit assignments by post since posted assignments are frequently late or do not arrive at all. **If, however, you do mail an assignment, do so well in advance of the due date** to ensure that the assignment reaches Unisa in time. Also, make a copy of the assignment before mailing it.

We strongly recommend that, if at all possible, **you submit your assignments via *myUnisa***. This will prevent your assignment from being delayed by the postal service. For the procedure to submit assignments electronically via *myUnisa*, consult the brochure *Study @ Unisa*.

NB: Submit your assignments in Adobe PDF format.

Assignments submitted via *myUnisa*, which are marked onscreen, will be available for viewing on *myUnisa*. Notification of the marked assignment will be sent to your *myLife* e-mail account.

Unisa's Assignment Division will not accept requests to cancel assignments via *myUnisa*. It is your responsibility to ensure that the content of your assignment is correct when you submit it via *myUnisa*. Please note that your lecturers will not re-mark an assignment if you submitted the incorrect version.

Remember: It is your responsibility to ensure that you assignments are received by Unisa before the closing date. To enquire whether Unisa has received your assignments, go to *myUnisa* or send an e-mail to assign@unisa.ac.za – include your student number in the subject line.

7.6 The assignments

7.6.1 Assignments for Semester 1

**ASSIGNMENT 01
FOR THE FIRST SEMESTER**

**SUBMISSION DATE: 13 MARCH 2020
NO EXTENSION**

UNIQUE NUMBER: 745925

COMPULSORY ASSIGNMENT

Please note: This assignment is compulsory for students registered for the FIRST SEMESTER and counts 10% of your final mark for this module.

You have to study Sections I and II of the study guide before you can do this assignment.

Question 1

- (a) Briefly explain what consanguinity in the collateral line means. (2)
- (b) May persons who are related by consanguinity in the collateral line enter into a civil marriage with each other? Explain your answer with reference to authority. (2)
- (c) Study the information below and answer the questions that follow.
- Mr and Mrs A have a daughter, Delila. Delila marries Peter, who is the son of Mr and Mrs Y. Delila and Peter have a son, Steven.
- (i) May Steven enter into a civil marriage with Mrs A? Answer “Yes” or “No”, and explain your answer with reference to authority. (3)
- (ii) May Peter enter into a civil marriage with Mrs A? Answer “Yes” or “No”, and explain your answer with reference to authority. (3)

(3)
[10]

Question 2

Mr and Mrs Dube are married in community of property. Mr Dube pledges the spouses' fridge and washing machine to his brother in order to obtain money to buy liquor. When Mrs Dube discovers what Mr Dube has done, she is furious. She immediately goes to Mr Dube's brother

and demands that he return the fridge and washing machine. She tells Mr Dube's brother that she never consented to the items being pledged and that she will never do so. Mr Dube's brother approaches you for advice. He informs you that he knew that his brother was married in community of property and that Mrs Dube had not consented to the pledging of the household goods. Explain to him whether he may retain the fridge and washing machine. Refer to authority in support of your answer.

[10]

NB: Your answer to Question 2 will be evaluated according to the following criteria:

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authority, acknowledging sources and avoiding plagiarism.	0	1-6	7
3. Applying the law to the facts of the problem.	0	0.5	1
4. Language, use of tenses/syntax and formulation.	0	0.5	1

TOTAL FOR ASSIGNMENT 01:

[20]

Note: At the end of this tutorial letter you will find a copy of this rubric. You have to cut it out and attach it to Assignment 01 before you submit it. This rule does not apply to students who submit their assignments electronically.

**ASSIGNMENT 02
FOR THE FIRST SEMESTER**

**SUBMISSION DATE: 9 APRIL 2020
NO EXTENSION**

UNIQUE NUMBER: 746032

Please note: This assignment also contributes 10% towards your final mark for this module.

You need to study all sections of the study guide before you can do Assignment 02.

- Since this is a multiple-choice assignment, it must be completed on a mark-reading sheet.
- Please write the correct unique number, namely **746032**, on the mark-reading sheet.

1 A marriage of convenience is ...

- [1] valid and unchallengeable.
- [2] valid but voidable.
- [3] void *ab initio*.
- [4] void but putative.

(1)

2 Tebogo and Sipho married a year ago. When the parties married, Tebogo knew that Sipho had been married before, but did not know that Sipho's previous marriage had not yet been dissolved by divorce. Tebogo and Sipho's marriage is ...

- [1] valid and unchallengeable.
- [2] valid but voidable.
- [3] void *ab initio*.
- [4] void but putative.

(1)

3 Which one of the following is **NOT** a requirement for the duty of support between spouses in a civil marriage?

- [1] The existence of a joint household.
- [2] A valid civil marriage between the parties.
- [3] The person claiming support must be in need of the support.
- [4] The person from whom the support is claimed must be able to provide it.

(1)

- 4 An antenuptial contract that is not registered in the Deeds Office is ...
- [1] void and unenforceable against the spouses and third parties.
 - [2] valid as between the spouses and against third parties.
 - [3] valid as between the spouses only.
 - [4] valid as against third parties only.
- (1)
- 5 Mr and Mrs Nkosi are married subject to the accrual system. When they married, Mrs Nkosi had no debts and owned a house which was valued at R100 000. Suppose that during the subsistence of the marriage money depreciated to such an extent, that according to the consumer price index, R2 now has the same value as R1 at the beginning of the marriage. Which one of the following amounts reflects the initial value of Mrs Nkosi's estate?
- [1] R0
 - [2] R50 000
 - [3] R100 000
 - [4] R200 000
- (1)
- 6 In which one of the following cases did the court issue a divorce decree in terms of the Divorce Act 70 of 1979 but order the husband, who was unwilling to co-operate in giving a divorce in terms of Jewish religious law to pay maintenance to his wife (who was not otherwise entitled to maintenance from him) until such time as their marriage was terminated by the granting of a *get*?
- [1] *Levy v Levy*
 - [2] *Wijker v Wijker*
 - [3] *Amar v Amar*
 - [4] *Schwartz v Schwartz*
- (1)
- 7 What kind of maintenance can be awarded to a spouse who does not need maintenance at the time of divorce, but may need it in the future?
- [1] Rehabilitative maintenance
 - [2] Token maintenance
 - [3] Lump-sum maintenance
 - [4] No maintenance
- (1)
- 8 Parties married in accordance with the Civil Union Act 17 of 2006 may legally refer to their relationship as a ...
- [1] civil partnership only.
 - [2] domestic partnership only.
 - [3] marriage or a civil partnership.
 - [4] marriage or a domestic partnership.
- (1)

9 The court's power to redistribute property upon the dissolution of a customary marriage by divorce applies ...

- [1] only to customary marriages concluded in community of property.
- [2] only to customary marriages concluded out of community of property before 1 November 1984.
- [3] only to customary marriages concluded out of community of property after 1 November 1984.
- [4] to all customary marriages regardless of when the marriage was concluded and regardless of how the marriage was concluded.

(1)

10 In terms of section 28(2) of the Constitution of the Republic of South Africa, 1996, a ...

- [1] child's best interests are of paramount importance in every matter concerning the child.
- [2] child has the right to participate in any matter concerning him or her and to have due consideration given to his or her views.
- [3] child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment.
- [4] child has the right to have a legal practitioner assigned to him or her by the state and at the state's expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

(1)

TOTAL FOR ASSIGNMENT 02

[10]

7.6.2 Assignments for Semester 2

ASSIGNMENT 01 FOR THE SECOND SEMESTER

SUBMISSION DATE: 20 AUGUST 2020
NO EXTENSION

UNIQUE NUMBER: 888570

COMPULSORY ASSIGNMENT

Please note: This assignment is compulsory for students registered for the SECOND SEMESTER and counts 10% of your final mark for this module.

You have to study Sections I and II of the study guide before you can do this assignment.

Question 1

Mr and Mrs Tau were married in 2010 and divorced in 2018. Upon divorce the High Court ordered Mr Tau to pay Mrs Tau R3 000 per month as maintenance for herself and another R2 500 per month as maintenance for the parties' two minor boys. In 2019, when Mr Tau's new girlfriend moved in with him, he stopped contributing to Mrs Tau and the boys' maintenance. He recently resigned from his job, but owns a luxury home and several expensive sports cars, which are all fully paid for. As Mrs Tau earns a meagre salary, she and the boys have been living in parlous conditions since 2019.

- (a) Name the two civil sanctions that are available to Mrs Tau to enforce the maintenance order in her and the boys' favour in the specific circumstances of this case. (2)
- (b) With reference to case law, explain whether Mrs Tau may elect to approach the High Court for civil sanctions against Mr Tau instead of using the procedure provided for by the Maintenance Act 99 of 1998? (6)
- (c) May the court authorise any of the civil sanctions against Mr Tau in respect of future maintenance payments for the boys? Answer "yes" or "no" and refer to a court case in support of your answer. (2)

[10]

Question 2

When Mr and Mrs Govender were married without an antenuptial contract in 2015, they were completely ignorant about the consequences of their marriage in community of property. Mr Govender now wants to start a risky business and is concerned that the new endeavour might prejudice Mrs Govender, who brought most of the assets of the joint estate into the marriage. Mrs Govender, who was previously married to a very rich man, also wants to ensure that her two daughters from her previous marriage benefit from the assets, which she inherited from

their father upon his sudden death in 2014. Is there anything that Mr and Mrs Govender can do to address their concerns? Fully explain with reference to legislation and case law. Restrict your discussion of case law to cases where the parties entered into a marriage in community of property.

[10]

NB: Your answer to Question 2 will be evaluated according to the following criteria:

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authority, acknowledging sources and avoiding plagiarism.	0	1-6	7
3. Applying the law to the facts of the problem.	0	0.5	1
4. Language, use of tenses/syntax and formulation.	0	0.5	1

TOTAL FOR ASSIGNMENT 01:

[20]

Note: At the end of this tutorial letter you will find a copy of this rubric. You have to cut it out and attach it to Assignment 01 before you submit it. This does not apply to students who submit their assignments electronically.

**ASSIGNMENT 02
FOR THE SECOND SEMESTER**

**SUBMISSION DATE: 23 SEPTEMBER 2020
NO EXTENSION**

UNIQUE NUMBER: 537357

Please note: This assignment also contributes 10% towards your final mark for this module.

You need to study all sections of the study guide before you can do Assignment 02.

- Since this is a multiple-choice assignment, it must be completed on a mark-reading sheet.
 - Please write the correct unique number, namely **537357**, on the mark-reading sheet.
- 1 In *Ex parte Dow* the court decided that a marriage that had been solemnised in the garden of a private dwelling is ...
 - [1] void.
 - [2] voidable.
 - [3] valid.
 - [4] putative.

(1)
 - 2 Mr and Mrs Botes are married in community of property. They live and farm on a beautiful property in Mpumalanga. The property is subject to a usufruct. Which one of the following assets falls into their joint estate?
 - [1] The crops on the farm which is subject to a usufruct
 - [2] The farm which is subject to a usufruct
 - [3] The engagement ring that Luke bought Sarah
 - [4] The disability payments that Sarah receives from Old Mutual after being injured

(1)
 - 3 Mr Singh donated a valuable painting to Miss Naidoo without the consent of his wife, Mrs Singh. Miss Naidoo knows that Mr Singh is married in community of property. Such a transaction is ...
 - [1] valid in terms of section 15(9)(a) of the Matrimonial Property Act 88 of 1984.
 - [2] invalid in terms of section 15(9)(a) of the Matrimonial Property Act 88 of 1984.
 - [3] valid in terms of the decision in *Bopape v Moloto*.
 - [4] invalid in terms of the decision in *Bopape v Moloto*.

(1)

- 4 In Mr and Mrs Khumalo's antenuptial contract Mr Khumalo undertakes to transfer an insurance policy to Mrs Nel as soon as their first child is born. This clause is called a ...
- [1] succession clause.
 - [2] "clean break" clause.
 - [3] marriage settlement.
 - [4] reversion clause.
- (1)
- 5 Which one of the following is **NOT** a way in which a civil marriage is dissolved?
- [1] The death of one or both of the spouses
 - [2] The annulment of a voidable marriage
 - [3] Divorce
 - [4] Extra-judicial separation
- (1)
- 6 Which one of the following criteria does the court have to take into account when considering an order for the forfeiture of patrimonial benefits against a spouse in terms of section 9 of the Divorce Act 70 of 1979?
- [1] The principle of fairness
 - [2] Undue benefit of the spouse
 - [3] The one-third rule
 - [4] The yardstick of equality
- (1)
- 7 In *Kooverjee v Kooverjee* Fortuin AJ made a rehabilitative maintenance award in favour of the wife for a substantial period. The maintenance amount was, however, to be decreased every two years by an amount of ...
- [1] R1 000.
 - [2] R2 000.
 - [3] R3 000.
 - [4] R4 000.
- (1)
- 8 Which provision affords every child who is of such an age, maturity and stage of development as to be able to participate in any matter concerning him or her, the right to participate in an appropriate way and to have due consideration given to his or her views?
- [1] Section 10 of the Children's Act 38 of 2005
 - [2] Section 28 of the Constitution of the Republic of South Africa, 1996
 - [3] Section 6 of the Divorce Act 70 of 1979
 - [4] Section 4 of the Mediation in Certain Divorce Matters Act 24 of 1998
- (1)
- 9 A customary marriage entered into after the Recognition of Customary Marriages Act 120 of 1998 (which came into operation on 15 November 2000) must be registered within ... months of the wedding date or within such longer period as the Minister prescribes in the Government Gazette.

- [1] 3.
- [2] 6.
- [3] 9.
- [4] 12.

(1)

10 For a parental responsibilities and rights agreement relating to guardianship to become enforceable, it must be made an order of court by ...

- [1] the High Court.
- [2] a Divorce Court in a divorce matter.
- [3] the Children's Court.
- [4] the High Court, a Divorce Court in a divorce matter or the Children's Court.

(1)

TOTAL FOR ASSIGNMENT 02:

[10]

7.6.3 Self-evaluation assignment for both Semester 1 and Semester 2**ASSIGNMENT 03**

Please note: This assignment MUST NOT be submitted since it is a self-evaluation assignment which does not count towards your final mark for this module.

SECTION A: MULTIPLE-CHOICE QUESTIONS

- 1 A and B are married. They have a daughter, Mary. B also has a son, Quintin, from a previous marriage. Mary and Quintin are related to each other as follows:
 - [1] They are collateral blood relatives.
 - [2] They are blood relatives in the direct line.
 - [3] They are relatives by affinity in the direct line.
 - [4] They are relatives by affinity in the collateral line.

(2)

- 2 Which one of the following is a common requirement for the spouses' reciprocal duty of support and the capacity to incur debts for household necessities in a civil marriage?
 - [1] The existence of a valid civil marriage.
 - [2] The existence of a joint household.
 - [3] The transaction must relate to household necessities.
 - [4] The person from whom the support is claimed must be able to provide it.

(2)

- 3 A debtor wants to claim a delictual debt that Zille incurred during her marriage in community of property with Julius. Zille and Julius are now divorced. Against whom can the debtor institute the claim for delictual debt?
 - [1] Only Julius
 - [2] Only Zille
 - [3] Either Julius or Zille
 - [4] Julius and Zille together

(2)

- 4 Mr Naicker, the sole member of a close corporation, binds himself as surety for the close corporation's loan from AB Bank. Mr Naicker did so without Mrs Naicker's consent with whom he is married in community of property. He did, however, conclude the suretyship in the ordinary course of his profession, trade or business. The transaction is therefore ...
 - [1] valid in terms of section 15(9)(a) of the Matrimonial Property Act of 1984.
 - [2] void in terms of section 15(9)(a) of the Matrimonial Property Act of 1984.
 - [3] void in terms of section 15(6) of the Matrimonial Property Act of 1984.
 - [4] valid in terms of section 15(6) of the Matrimonial Property Act of 1984.

(2)

- 5 At the time of their marriage, Mandla and Khanyi were ignorant of the consequences of their marriage in community of property. It is only now that they realised separation of property would have suited their circumstances much better. What must Mandla and Khanyi now do to ensure that they are formally married out of community of property?
- [1] They must bring a court application in terms of section 88 of the Deeds Registries Act 47 of 1937 for leave to change their matrimonial property system.
 - [2] They must bring a court application in terms of section 21(1) of the Matrimonial Property Act 88 of 1984 for leave to change their matrimonial property system.
 - [3] They must enter into a written postnuptial agreement and have it notarially executed.
 - [4] They must obtain a decree of divorce before changing their matrimonial property system.
- (2)
- 6 Which section of the Divorce Act 70 of 1979 creates an exception to the rule that the court does not have the power to refuse to grant a divorce order where it is proved that the marriage has broken down irretrievably?
- [1] Section 3
 - [2] Section 4(1)
 - [3] Section 5(2)
 - [4] Section 5A
- (2)
- 7 Mr and Mrs Modise were married with complete separation of property on 10 December 2000. They are now involved in divorce proceedings. With regard to Mr Modise's pension interest in Unisa's pension fund, Mrs Modise ...
- [1] will not be entitled to claim part of Mr Modise's pension interest at all.
 - [2] will be entitled to claim that part of Mr Modise's pension interest must immediately be paid to her directly.
 - [3] will be entitled to claim that part of Mr Modise's pension interest must immediately be transferred to a pension fund of her choice.
 - [4] will not be entitled to claim part of Mr Modise's pension interest until such time as he retires or resigns from his job at Unisa.
- (2)
- 8 Mr and Mrs Carrim were married with complete separation of property in 1982. Which one of the following contributions will NOT qualify for a redistribution order in favour of Mrs Carrim upon divorce in terms of our legislation and case law?
- [1] Mrs Carrim takes care of the household and the children born from the marriage.
 - [2] Mrs Carrim manages the books of Mr Carrim's psychology practice in her spare time without remuneration.
 - [3] Mrs Carrim declines an offer to be the manager of a new business in Dubai as it would have been detrimental to Mr Carrim's psychology practice.
 - [4] Mrs Carrim contributes part of her salary towards Mr Carrim's holiday home.
- (2)

9 What kind of maintenance can be awarded to a wife who needs maintenance at the time of divorce, but whose former husband will only be able to meet her existing maintenance needs at some stage in the future?

- [1] Rehabilitative maintenance.
- [2] Token maintenance.
- [3] Lump-sum maintenance.
- [4] No maintenance.

(2)

10 Paul and Mary are involved in divorce litigation. They have a son, aged 6 and a daughter, aged 1. In which one of the following scenarios according to the case, *Van Vuuren v Van Vuuren* does the family advocate NOT need to apply for an order authorising an enquiry in terms of the Mediation in Certain Divorce Matters Act 24 of 1987?

- [1] Paul and Mary agree that Mary will be the care-giving parent of the children after the divorce.
- [2] Paul and Mary agree that Paul will be the care-giving parent of the children after the divorce.
- [3] Paul and Mary agree that Paul will be the care-giving parent of their son and Mary will be the care-giving parent of their daughter after the divorce.
- [4] Paul and Mary agree that care of the children should be awarded to Paul's parents after the divorce.

(2)

11 Which one of the following requirements does NOT apply to a civil union?

- [1] Both parties must have capacity to act.
- [2] Both parties must agree to enter into a civil union with one another.
- [3] Both parties must be of the same sex.
- [4] The civil union between the parties must be lawful.

(2)

12 In *Gumede v The President of the Republic of South Africa* the Constitutional Court removed the differentiation between the patrimonial consequences of entered into before and after the Recognition of Customary Marriages Act 120 of 1998:

- [1] monogamous customary marriages
- [2] minor's customary marriages
- [3] polygynous customary marriages
- [4] civil unions

(2)

13 In which one of the following circumstances would a child be considered adoptable?

- [1] The child performs poorly at school.
- [2] The child is constantly fighting with his or her siblings.
- [3] The child has been abandoned.
- [4] The child wants to move to another city.

(2)

14 In which one of the following ways can a person acquire parental responsibilities and rights in respect of a child?

- [1] Entering into a permanent life partnership with the child's biological mother after the child's birth.
- [2] Entering into a civil marriage with the child's mother but divorcing her before the child is conceived.
- [3] Giving birth to the child.
- [4] Paying a sum of money to the court to acquire such responsibilities and rights.

(2)

15 Section 28 of the Constitution of the Republic of South Africa, 1996 confers special protection on children below the age of

- [1] 21 years.
- [2] 18 years.
- [3] 16 years.
- [4] 10 years.

(2)

TOTAL SECTION A: [30]

SECTION B

QUESTION 1

Mr and Mrs Noah entered into a civil marriage without an antenuptial contract. They have one child, Trevor. At the time of entering into the marriage, Mrs Noah was unaware of the fact that Mr Noah was already a party to another civil marriage in community of property. Mrs Noah found out about the other civil marriage after Mr Noah's death.

- (a) What is this type of marriage between Mr and Mrs Noah called? (1)
- (b) What is the legal status of Trevor, a child born from Mr and Mrs Noah's marriage? (1)
- (c) Mrs Noah approaches you as an attorney for advice. Advise her about the validity of her marriage and its patrimonial consequences, if any. Refer to relevant case law in your answer. (7)

[9]

QUESTION 2

Mr and Mrs Naidoo were married out of community of property in 2000. They did not expressly exclude the accrual system in their antenuptial contract. At the time of the conclusion of their marriage, Mr Naidoo had no assets while Mrs Naidoo had shares at Cell C worth R50 000. Mr Naidoo died last month.

Mr Naidoo's net estate at the time of his death is valued at R900 000 and includes *inter alia* the following:

- A leopard skin worth R40 000 given to him as a gift by Mrs Naidoo in celebration of his 50th birthday
- R160 000 which he received as satisfaction for pain and suffering after being attacked by his neighbour's dogs
- Livestock to the value of R400 000 kept at Mrs Naidoo's farm
- Half the net value of the spouses' home; the value of the net half is R300 000

Mrs Naidoo's net estate at the time of Mr Naidoo's death is valued at R1 700 000 and includes *inter alia* the following:

- A small farm in Magoebaskloof valued at R1 000 000 which she inherited intestate from her father
- A pension interest of R400 000 in her employer, Gijima Cycle (Pty) Ltd
- Half the net value of the spouses' home; the value of the net half is R300 000

Suppose that during the subsistence of the marriage, money depreciated to such an extent that, in terms of the weighted average of the consumer price index, R2.00 now has the same value as R1.00 at the beginning of the marriage. Indicate by doing the necessary calculations whether Mrs Naidoo has an accrual claim against Mr Naidoo's estate. Discuss your answer by fully substantiating your calculations.

[15]

QUESTION 3

Mr and Mrs Kerr married out of community of property without the accrual system in 2004. It was Mrs Kerr's first marriage and Mr Kerr's second marriage. Mr Kerr has three adult children from a previous marriage. Mrs Kerr is much younger than Mr Kerr. She has never worked during the marriage, as Mr Kerr believes that a woman's place is in the home. During the marriage, Mrs Kerr inherited a small apartment from her mother which she immediately donated and transferred to Mr Kerr to thank him for taking such good care of her. She has no other assets.

- (a) Suppose that after 15 years of marriage Mr Kerr now wants to get divorced and marry an even younger woman. What are Mrs Kerr's chances of succeeding with a claim for forfeiture of patrimonial benefits in terms of section 9 of the Divorce Act 70 of 1979 against Mr Kerr upon divorce? Fully discuss with reference to the requirements for a forfeiture order and the benefits which can be forfeited in this set of facts. Also refer to the relevant case law.

(12)

- (b) Suppose that after 15 years of marriage Mr Kerr dies and bequeaths the whole of his estate to his three children from his previous marriage. What are Mrs Kerr's chances of succeeding with a claim for maintenance against Mr Kerr's deceased estate in terms of the Maintenance of Surviving Spouses Act 27 of 1990? Fully discuss with reference to the provisions of the Act, the factors the court must take into account and the question whether a lump-sum maintenance award may be possible. Also refer to the relevant case law.

(10)

[22]

QUESTION 4

The names of five court cases dealing with Muslim and Hindu marriages and life partnerships are given below. Write the name of the court case that offers authority for the statement in the first column on the dotted line in the second column.

Govender v Ragavayah

Gory v Kolver

AM v RM

Khan v Khan

Ryland v Edros

Statement	Case
The court held that the contractual obligations flowing from a <i>de facto</i> monogamous Muslim marriage can be recognised and enforced as between the parties despite the fact that the marriage is potentially polygynous.	
The court granted a Muslim woman's application for maintenance <i>pendente lite</i> in terms of rule 43 of the Uniform Rules of Court even though the spouses never entered into a civil marriage.	
The court held that the word "spouse" in the Intestate Succession Act 81 of 1987 includes the surviving partner in a monogamous Hindu marriage.	
The court declared the exclusion of same-sex life partners from intestate inheritance from each other's deceased estate in terms of the Intestate Succession Act 81 of 1987 unconstitutional.	
The Transvaal Provincial Division of the High Court (now the North Gauteng High Court) recognised the duty of support in a <i>de facto</i> polygynous Muslim marriage.	

[10]

QUESTION 5

Rick and Daisy have been married for five years. At the time of their marriage Daisy already had a daughter, Rose (now aged 8), from a previous marriage. Another daughter, Petunia (now aged 2), was born from Rick and Daisy's marriage. Rick and Daisy now consider divorce. Answer the following questions:

- (a) Will Rick be obliged to maintain his stepdaughter, Rose in terms of the common law? Answer "Yes" or "No". (1)
- (b) Briefly discuss the High Court decision in *Heystek v Heystek* [2002] 2 All SA 401 (T) with regard to a stepparent's duty to support his stepchild. (2)
- (c) Briefly discuss the High Court decision in *MB v NB* 2010 (3) SA 220 (GSJ) with regard to a stepparent's duty to support his stepchild. (2)
- (d) According to Heaton and Kruger, will Rick be obliged to maintain his stepdaughter, Rose? Answer "Yes" or "No" and motivate your answer briefly. (2)
- (e) Name two instances where the consent of both Rick and Daisy, as guardians of Petunia, will be required in terms of section 18(5) read with section 18(3)(c) of the Children's Act. (2)
- (f) If the divorce court makes a maintenance order for the maintenance of Petunia, will the order automatically lapse when Petunia becomes self-supporting? (5)

[14]**TOTAL SECTION B: [70]****TOTAL PAPER: [100]**

7.7 The examination

7.7.1 Examination admission

Please note: Students registered for PVL2601 do not have automatic admission to the examination. In order to gain admission to the examination, you have to submit Assignment 01. If you fail to submit this compulsory assignment before the due date, you will not gain admission to the examination. Assignment 01 counts 20 marks and contributes 10% towards your final mark for the module.

Assignment 02 is also a compulsory assignment in the sense that, like Assignment 01, it contributes a further 10% towards your final mark for the module. Failure to submit Assignment 02 will not influence your examination admission, since it is only the submission of Assignment 01 that will give you examination admission. However, since Assignment 02 also counts 10% towards your final mark for the module, it is of the utmost importance that you submit it.

Both Assignments 01 and 02 are therefore compulsory in the sense that they contribute a total of 20% towards your final mark. However, only Assignment 01 affects your examination admission.

Further note that you need not pass Assignment 01 (i.e. obtain at least 50% for it) to gain examination admission. Mere submission of Assignment 01 earns you examination admission. However, we strongly recommend that you put effort into Assignment 01 since this assignment counts 10% towards your final mark for Family Law. It will therefore be to your advantage to obtain a good mark for it.

7.7.2 How will this work in practice?

As was indicated above, Assignment 01 counts 10% and Assignment 02 a further 10% towards your final mark, that is, these two assignments count 20% towards your final mark. To arrive at your semester mark (ie the 20% contributed by your assignment marks), you must divide the percentage you received for each of the assignments by 10 and add the two marks together. For instance, if you received 60% for Assignment 01 and 80% for Assignment 02, you would have a semester mark of 14 marks ($6 + 8 = 14$). Therefore, you would already have 14 marks towards your final mark.

Please note: The aforementioned information does not apply to Assignment 03. Assignment 03 is a self-evaluation assignment and does not count towards your final mark for Family Law.

The examination mark will count 80% towards your final mark. In other words, the mark out of 100 you obtain in the examination will be converted to a mark out of 80. This will be done by dividing the percentage you receive in the examination by 10 and multiplying this number by 8. For instance, if you receive 45% in the examination, your mark out of 80 will be 36 ($45 \div 10 = 4.5$, and $4.5 \times 8 = 36$).

7.7.3 The required subminimum for your examination mark

It is very important that you should note that a subminimum applies for your examination mark: You need to obtain at least 40% in the examination before your assignment marks will be taken into account for purposes of determining whether you pass, fail or qualify for a supplementary examination. That means that a student who obtains at least 40% in the examination and who worked during the semester and consequently has good assignment marks will have a great advantage over a student who has no assignment mark or bad assignment marks. It also means that even if you get full marks for Assignments 01 and 02 you will still fail the module if

you earn less than 40% in the examination. You will not even be allowed to write a supplementary examination.

7.7.4 Examination period and supplementary examinations

This module is offered in a semester period. This means that if you are registered for the first semester you will write the examination in May/June 2020 and the supplementary examination will be written in October/November 2020. If you are registered for the second semester, you will write the examination in October/November 2020 and the supplementary examination will be written in May/June 2021.

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.

7.7.5 Past examination paper

A past examination paper will be uploaded on *myUnisa* before the examination. Also note that Assignment 03 is a copy of a recent examination paper. It serves as an example of the types of questions we usually ask in the examination. You will receive the memorandum on Assignment 03 in Tutorial Letter 201.

8. FREQUENTLY ASKED QUESTIONS

The brochure, *Study @ Unisa*, contains an A-Z guide of the most relevant study information.

8.1 How will I obtain my study material?

Some of the 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*.

Please note: Your lecturers cannot help you with missing study material. Please consult the publication *Study @ Unisa*.

8.2 Do I have to study all the cases?

Do I have to study each case that is discussed in my study guide and prescribed textbook even if it is not one of my prescribed cases listed under "Prescribed Learning Material" in my study guide?

These cases must be studied in the way in which they appear in your study guide or textbook. Decisions by our courts are an important source of authority. If a case dealing with a particular aspect is discussed in your study guide or in the prescribed sections of your textbook we expect you to refer to that case in your answers to assignments and examination questions other than multiple choice or true/false questions, even if that case is not one of your prescribed cases.

8.3 Where can I obtain past examination papers?

A past examination paper will be uploaded on *myUnisa* before the examination. Further note that Assignment 03 is a copy of a recent examination paper. It serves as an example of the types of questions we usually ask in the examination. It is however not sufficient to study only past examination papers.

8.4 Do I have to buy the newest edition of the textbook or can I use an older edition?

You will have to buy the newest edition of the textbook. Family law changes constantly due to the dynamic nature of the law and for this reason it would not suffice to use an older edition of the textbook.

9 IN CLOSING

This brings us to the end of the tutorial letter. We hope that you will enjoy this module.

10 ADDENDUM

NB: When doing the assignment remember that you will be evaluated according to the following criteria:

Cut out this rubric and attach it to your Assignment 01 for **Semester 1** before submission:

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authority, acknowledging sources and avoiding plagiarism.	0	1-6	7
3. Applying the law to the facts of the problem.	0	0.5	1
4. Language, use of tenses/syntax and formulation.	0	0.5	1

Cut out this rubric and attach it to your Assignment 01 for **Semester 2** before submission:

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authority, acknowledging sources and avoiding plagiarism.	0	1-6	7
3. Applying the law to the facts of the problem.	0	0.5	1
4. Language, use of tenses/syntax and formulation.	0	0.5	1