FEEDBACK TUTORIAL LETTER

1ST SEMESTER 2021

ASSIGNMENT 1

Law for Public Managers 1A  
(LPM521S)
Greetings to you all. Thank you all for submitting your assignments on time. Although some of you managed to pass assignment 1, many of you could not. I am so disappointed in the performance of those who failed to score at least a 50. Be as it may be, I am still of the opinion that you will do well in your next assignment.

Below are some of the challenges that I encountered in relation to your assignments. The comments below are not meant to break you, rather to encourage you to do better in all your assignments.

1. Plagiarism

Many of you do not understand the seriousness of plagiarism. Using somebody else’s ideas without acknowledging them is a serious academic offense. This offense can attract a severe punishment. Please adhere to NUST’s guidelines pertaining to academic referencing.

2. Copying and pasting internet sources without analyzing them

I have also observed that many of you have a tendency of copying and pasting internet sources without acknowledging them as well as failing to provide an analysis thereto. Please refrain from this practice. Recommended materials and other relevant sources to your course are available on your feedback tutorial.

3. Copying each other’s work

I have also observed that a number of you have resorted to copying and pasting each other’s work. Word for word, mistake for mistake. This is so unfortunate. You are allowed to work together when answering your assignment questions, however what is not allowed is to submit assignments which are identical to one another to me. If you do so, I will mark both of you “zero”.

4. Failing to read and understand your own assignment questions

I have also noticed that may of you fail to comprehend the nature of your assignment questions. This is attributed to the fact that you don’t invest time and energy to read and understand them. I have also observed that many of you wait until the last minute to do your assignments. This lack of preparations has greatly contributed to you getting low marks.
Having said the above, below are the model answers for your assignment 1. I wish you the best in your next assignment.
Question 1

Answer the following statements as either true or false and motivate why?

1.1 Legal subjects can only be corporate entities subject to the law.
   False. Natural persons can also be legal subjects (1)

1.2 Roman Dutch common law is a very important source of Namibian law.
   True. It serves as the bedrock of Namibia’s legal system. (1)

1.3 Decisions of the Supreme Court of Namibia can be challenged at the International Criminal Court
   False. The Supreme Court is the highest court of the land and its decisions are final (1)

1.4 Customary law is recognized under various legal instruments in the country
   True. Article 66 of the Namibian Constitution recognizes customary law. (1)

1.5 A legal textbook is not among the sources of Namibian law
   False. Legal textbooks/writings are among the main sources of Namibian law (1)

Question 2

2.1 Since apartheid was a crime against humanity, it is thus necessary for Namibia to repeal all laws prior to modern statehood. Do you agree?
   No. (1) Article 140(1) (1) provides that all laws which were in force immediately before the date of independence shall remain in force until or amended by parliament (1) or declared unconstitutional by a court. (1)

2.2 The state president has the power to rule by decree. He can disregard court action if he believes the court ruling is not in the public interest. Do you agree
   No. (1). The rule of law doctrine restrains him. (1) this doctrine developed as a basis for countering arbitrary state action. (1) The doctrine holds that executive acts must comply with the requirements laid down by law and that it may be judicially reviewed by the courts who are also entitled to set aside invalid acts. (1)

Question 3

3.1 Why is it crucial for different parts of government to cooperate or act in conjunction with other government authorities at national, regional and local levels? (4)
   - Firstly, each sphere of government depends on other spheres for effective functioning. (1)
   - Secondly, one sphere of government may participate in the decision-making of the other levels of government. (1)
   - Thirdly, each level of government supports and assists the other. (1)
   - Finally, co-operative government brings about expertise sharing and ensures the delivery of better services to the general public. (1)

3.2 What is an administrative law relationship?
   It’s a juridical relationship where two or more parties enter into a relationship with one another and which is governed by the law. (1) Such relationships may arise by agreement or the occurrence of an event of which the law takes cognizance. (1). Therefore, a relationship either comes into existence by agreement or by the fact that something happened and then a relationship is recognized. (1)

Question 4
Identify which form of delegation applies in scenarios below

4.1 Saviour Ndembela is an Executive Director in the Ministry of Tertiary Institutions. He instructs one of his Directors to deliver a ministerial speech at an education seminar organized by the United Nations agency responsible for higher education. However, an hour before the speech is to be delivered, the Executive Director calls the Director to report back to the office and instructs a junior staff member to do so on his behalf.

- Deconcentration (1)
  - The delegate acts on behalf of or in the place of the delegans and performs the function as if the delegans were performing it himself. (1)
  - He may also refer the function back to the delegans for performing it. (1)
  - It concerns the transfer of power within the same sphere (1)
  - Delegation within the same sphere. (1)
  - Functions performed by the delegate are still performed in the name of the functionary who had delegated the powers to him (the delegator or delegans). (1)
  - There is a transfer of discretionary powers. (1)
  - The superior organ (delegans) may withdraw the delegation at any time and perform the function himself or issue orders as regards the manner in which the functions must be performed by the delegate. (1)
  - Students may mention any of the six characteristics above

4.2 After getting injured in a car accident, Deejay Ndjambula, a school principal at a certain high school, instructs his second in command, Sinfwa Sinfwa to act on his behalf until he recovers.

- Mandate (1)
  - This the simplest form of delegation (1)
  - This means that the higher organ itself takes the decision in principle concerning the particular matter, and then issues instructions to the subordinate organ in regard to the practical implementation of the decision. (1)
  - It follows that the subordinate organ merely performs certain mechanical functions and there is no abdication of authority. (1)
  - The superior organ evidently remains fully responsible and the executive actions are always performed in his name. (1)
  - The essence of the matter remains that the original functionary must exercise his own judgment as regards the discretion entrusted to him. (1)

4.3 The state president delegates the Minister of Defence to attend a Southern African Development Community extraordinary summit in Harare, Zimbabwe. In his absence, he appoints the Minister of Justice to oversee the mandate of the defence Ministry.

- Assignment of powers (1)
  - Under this form of delegation, the person to whom the powers are transferred, completely occupies the position of the original functionary and he is therefore vested with the same powers as the functionary. (1)
  - He thus finds himself in the position of a substitute, and the responsibility and duty to exercise the transferred powers also rests with him. (1)
  - The legal position where the powers are assigned is thus that, even if a law confers powers of delegation to the original functionary, the substitute is also entitled to exercise it. (1)
  - The legal position where powers are assigned is thus that, even if a law confers powers of delegation to the original functionary, the substitute is also entitled to exercise it. (1)
  - If the substitute was in the same position as a delegate, he would, on account of the delegare delegatus non potest-rule, and in the absence of authority, not be entitled to use powers of delegation in order to effect a further delegation (sub-delegation). (1)
4.4 The Minister of Urban and Rural Development allocates a sum of N$ 670 million to the Erongo Regional Council to embark on employment and poverty alleviation projects.

Decentralisation (1)
This is usually found in the independent control relationship. (1)
In a decentralization of activities, powers are transferred to an independent body or organ who exercises it in its own name. (1)
This means that, as a rule, the delegans may not interfere and perform the function himself. (1)
He however, retains two important forms of control over the independent body, viz.

- The appointment of its members and (1)
- The retention of powers to some form of appeal against or review of the decisions of the body. (1)

Total marks: (50)