FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

ASSIGNMENT 1

SPORTS LAW AND REGULATIONS

SLR611S
CENTRE FOR OPEN AND LIFELONG LEARNING

SPORTS LAW AND REGULATIONS (SLR611S)

TUTORIAL LETTER 02/2019
Dear Student

I trust that, by the time you are reading this Second Tutorial Letter of 2019 for Sports Law and Regulations, you have received and perused your marked Assignment number 1.

To those of you that did well – CONGRATULATIONS! It is a pleasure to mark assignments that have obviously been completed with care. To those of you that fared poorly – remember that your marks are often a reflection of your attitude; if you try to complete an assignment in the shortest time possible you cannot expect to do well.

It is apparent that many students still do not know how to study on distance mode. The study guide contains a detailed introduction with recommendations about how to use the guide. You do not learn anything by simply scratching around to find the page in the study guide that appears to have the answer to a particular question in the assignment. You need to work systematically from the beginning of the semester; otherwise you will be unable to master the subject.

Please feel free to contact me for assistance while you are studying. I prefer e-mail as method of communication, and will try my best to respond as soon as possible. Very few students approached me for assistance while they were completing their assignment. Yet during the week before the exam I am inundated with students crying that they do not understand the work. By then it is too late! I must unfortunately make it clear that I will NOT be available to explain the entire semester’s work within a couple of hours to students who have not made the effort to work during the semester.

The purpose of this letter is, inter alia, to make certain observation regarding your answers to the questions as contained in the aforesaid assignment in an attempt to guide you to find the most appropriate answers and/or solutions.

Sports Law and Regulations is a difficult course, especially so if you are not proficient in the English language. However, it is not impossible to pass, or even to do exceptionally well. All it takes is hard work and commitment.

Remember that tutorial letters form part of your study material for examination purposes.
Firstly, some general comments:

1. Some students tend not to read a question in order to establish exactly what is asked and, as a result, you have lost marks. Also observe the mark allocation in order to decide how many facts to include in your answer.

2. Read your answer! Carelessness costs marks!

3. Make sure that you have answered all the questions. In an assignment there is no excuse to omit questions.

4. Make sure of the spelling of words. You were already requested to do so in the First Tutorial Letter. There is therefore no excuse if you have lost marks as a result thereof. It is really alarming to note that tertiary students misspell words even when copying from the study guide!

5. The use of telegram-style answering is not accepted. Again, it is evident that most of you have not read the First Tutorial Letter where these issues have been addressed. A mere "Yes" or "No" answer also does not deserve any marks, as you were warned that such an answer requires a proper motivation in addition.

6. On the other hand, if the question asks you to "name" something, an explanation is not required, and you will waste valuable time in the exam writing unnecessary long paragraphs.

7. Keep your answers concise and to the point. In the examination the markers do not have time to wade through pages of jumble in order to search for one correct key word. In fact, we do not mark on key words at all; if the context in which you use the words does not show understanding no marks will be allocated.

8. Please do not copy the questions into your assignment book; the tutors have a copy of the assignment and it wastes time to have to figure out where the question ends and the answer starts.

9. Note that in the exam you will be penalised if the first part of your answer is wrong, but your motivation is perhaps correct (or vice versa). The reason for this way of marking is that if you contradict yourself in your answer it gives the impression that you do not understand the study material properly.

10. Read the instructions in each question carefully. The following terms appear frequently in the phrasing of questions. You should know their meaning and answer accordingly.
• **Analyse:** Separate the topic into parts and examine each part critically.

• **Compare:** Look for qualities or characteristics that resemble each other. Emphasise similarities but also mention differences.

• **Contrast:** Stress the differences between concepts, qualities, events or problems.

• **Criticise:** Assess and evaluate. Point out correct and incorrect aspects.

• **Define:** Give a concise, clear and authoritative meaning. Details are not required.

• **Describe:** Recount, characterise, sketch or relate in sequence or story form.

Please feel free to contact any one of your marker-tutors at the following numbers:

**Ms M Hanekom**

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E-mail: mhanekom@nust.na
QUESTION 1

These questions were straight-forward, and most students scored good marks. I am concerned, however, about the amount of direct copying from the study guide that I picked up. The purpose of the assignments is to assist you to prepare for the examination, and simply copying numerous paragraphs does not serve this purpose.

Please watch the mark allocation: for two marks you need not write more than two lines!

1.1

No. Only when required by law or if agreed by the parties.

1.2

I provided you with a list of commonly used terms. Please take note of these. “Compare” means “look for qualities or characteristics that resemble each other. Emphasise similarities but also mention differences.” It does not mean “copy the explanations of the terms from the study guide”.

Mora debitoris refers to instances where the debtor does not perform on time. In mora creditoris the creditor is in breach of contract, by not making performance possible.

1.3

Remember that “explain the difference” does not mean “give a definition of each concept”.

In the examination you will be penalised if you simply give definitions, without pointing out the differences.

With an option there is an existing offer, coupled with an agreement to keep the offer open for a specific period of time. With a right of pre-emption no offer has been made; there is merely an agreement that, should the offeror decide to make an offer, it will firstly be made to the holder of the right of pre-emption.

1.4

Always read your questions carefully and answer only what is asked of you. In this instance only one or two words was required. It is important that you understand the meaning of the terminology used and the concepts referred to. In the examination this can also be assessed
“the other way around”; i.e. I give you the concept, and you must explain what it is. Make sure you can do this.

a) Merger.

Merger is the concurrence of the debtor and creditor in the same person and of the same obligation; the contract terminates. In this instance Peter, who was the lessor, becomes the owner. You cannot rent something from yourself.

b) Delegation.

Gerome was the debtor; he transfers his duties to Peter, with the consent of the landlord (creditor).

c) Specific performance.

d) *Stipulatio alteri* (contract for the benefit of a third person)

This is a contract in terms of which one party (UNAM) agrees with another (NUST) to perform something for the benefit of the third person (the NUST rugby team).

e) Repudiation

**QUESTION 2**

If a case study has a number of sub-questions, read all the questions before you start answering. Answer only what is asked in a particular sub-question. All the information you need to pass this course is in the study guide, you do not have to Google!

2.1

A restraint of trade is an agreement that prevents one or both parties to engage in one or more specified commercial activities for a specified period and/or within a specified geographical area.

2.2

Write your answers in paragraph form. Marks will be deducted for answers using bullet points – these are used for lists, not for discussions.

A contract in restraint of trade brings two principles of public policy into conflict, namely that it is in the public interest that everyone should be able to freely partake in trade and business activities, but on the other hand it is also in the public interest that contracts must be executed. Our courts generally regard contractual commitment as the stronger of the
two interests and will generally be prepared to enforce a restraint of trade. It will be up to Mbeki to prove that the restraint of trade is contrary to the public interest. The Court will consider aspects such as reasonableness, the parties’ original bargaining position, time and area. In this instance it can be argued that three years is a very long time for a professional football player, and he is being denied the opportunity to earn a livelihood. It is unlikely that YGFC will be successful in enforcing the restraint of trade.

*Marks were also awarded for any well-motivated answer, even if your conclusion differed from mine.*

**QUESTION 3**

This question expected of you to apply your knowledge of various aspects of the work (from several different units) to one case study. It also consists of a combination of theory- and application questions and is typical of what you can expect in the examination. Read all the questions differently and answer only what is requested of you.

3.1

16 March 2018. In terms of the Information theory a contract comes into existence at the time when the offeror hears about the acceptance of the offer. This is also applied if acceptance takes place telephonically, as the parties are considered as being in each other’s presence.

Always read the facts carefully. In this instance the agreement that the contract should be committed to writing was not a requirement for the validity of the contract, but was merely “to serve as proof” of their agreement.

3.2

Makupi has intentionally prevented performance by making it impossible. This is breach of contract (prevention of performance). Jono can cancel the contract and claim damages.

3.3

If Makupi is so intoxicated that he cannot understand that he is concluding a contract he will have no contractual capacity because he cannot form a will. There will be no consensus and the contract is void.

3.4

The contract is prohibited by law and is therefore are void. Makupi cannot claim
performance, restitution cannot take place and no claim on the ground of unjust enrichment can be instituted.

Please do not hesitate to contact me if you have any queries regarding the work covered in the assignment.
GUIDELINES FOR ANSWERING PROBLEM QUESTIONS

In order to find a legal answer to a practical problem requires reasoning, where a number of steps are to be taken in a specific order. This order is described in the following flowchart.

One aspect should become clear when studying the flowchart: In order to successfully master the application of the law, we need a certain knowledge basis from which we can draw partial answers. So what does that tell us about studying? Well, it points out that knowledge comes first, and understanding can only be developed on the basis of facts that have been learned. But don’t get it wrong: both knowledge and understanding are needed in order to analyze a problem and to devise a solution to it*.

Knowledge → Understanding → Problem-Analysis → Problem-Solution

*In order to develop a solution to a specific problem, you need to conduct a problem-analysis, which requires an understanding of the problem-area; but a sound knowledge base is a prerequisite for your understanding.

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1.</td>
<td>You need to <strong>GET</strong></td>
<td>an understanding of the practical problem/question (this is preparation but does not form part of your answer)</td>
</tr>
<tr>
<td>2.</td>
<td>You need to <strong>IDENTIFY</strong> and <strong>EXPLAIN</strong></td>
<td>a legal concept, providing a legal consequence which matches/corresponds with the desired/requested outcome, the <strong>objective</strong>. Briefly discuss the <strong>meaning</strong> of the legal concept</td>
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<tr>
<td>3.</td>
<td>You need to <strong>LIST</strong> and <strong>EXPLAIN</strong></td>
<td>the requirements/sub-requirements for the legal concept</td>
</tr>
<tr>
<td>4.</td>
<td>You need to <strong>COMPARE</strong></td>
<td>the requirements with the facts given in the problem narrative</td>
</tr>
</tbody>
</table>
| 5. | You need to **CHECK** | whether each and every requirement is met 

   YES

   NO

| 6. | You need to **CONCLUDE** whether the legal concept selected above (step 2) is | 

   • either applicable and its legal consequences (for instance: contractual liability, valid partnership agreement or contract) follow

   • or not applicable and its legal consequences do not follow |

| 8. | You need to **ANSWER** | the practical problem/question |
NOTE THE FOLLOWING:

1. The purpose of problem-based questions is to assess whether you have the ability to apply the law to a given set of facts in order to come to a well-motivated conclusion.

2. Do not start your answer with a conclusion – you cannot be sure of what the conclusion is going to be before you have worked through the entire process.

3. Simply re-stating the law is not enough. COMPARE the requirements with the facts given in the problem narrative. State which ones are applicable / not and give reasons based on the facts. In other words, MOTIVATE YOUR ANSWER. Simply stating the legal principles will not earn you marks.

4. It is quite possible that, based on your interpretation of the facts, your final conclusion might differ from that of your fellow student. Marks are awarded for a well-constructed argument that shows understanding, irrespective of the final conclusion.

5. Keep your answers concise and to the point. In the examination the markers do not have time to wade through pages of jumble in order to search for one correct key word. In fact, we do not mark on key words at all; if the context in which you use the words does not show understanding no marks will be allocated.

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