

DEPARTMENT OF MERCANTILE LAW

LEGAL ASPECTS OF ELECTRONIC COMMERCE

IPSP078

Tutorial Letter 101/3/2018

SCHEME OF WORK, STUDY RESOURCES AND ASSIGNMENTS

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1 A WORD OF WELCOME

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module 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.

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 lecturer(s).

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

This tutorial letter also includes certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the correspondence** you receive during the semester **immediately and carefully**, as it always contains important and, sometimes, urgent information.

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

2 TUITION RATIONALE

Legal Aspects of Electronic Commerce (IPSP078) is one of the advanced modules offered as part of a joint intellectual property programme by the University of South Africa and the WIPO Worldwide Academy. The focus of this module is on e-commerce and the special circumstances prevailing in developing countries. This module will approach the subject-matter against the background of international conventions and the obligations they impose on developing countries. It will then be demonstrated, using South African law as an example, how these obligations have been discharged. You will be expected to examine the law of your own countries to determine how they apply to the on-line environment and how these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module (also the DL202 module) and have registered for the WIPO/UNISA Specialisation Program in Intellectual Property for the first time should note that this is an advanced module dealing with the finer detail and more complicated aspects of the topic.

This module will therefore require a far greater effort on your part than did the DL101 module as well as an independent, responsible and critical approach. The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to e-commerce within the structure and functioning of the legal systems of developing countries.

You will not be able to rely solely on the lecture notes. Indeed, it will be essential to supplement these by having recourse to the relevant statutes and decisions of the courts, and also by consulting the prescribed materials.

After studying this module, completing the activities and critically evaluating your own responses, you should be able to use your knowledge of the general legal aspects of electronic commerce in everyday situations, understand the basic structure and functioning of electronic commerce, engage with selected legal texts pertaining to electronic commerce, pass on knowledge obtained

through your studies to members of organisations or bodies involved in the practice and regulation of electronic commerce.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturer(s) responsible for this module are as follows:

Lecturer's name:	Dr Sebo Tladi
Building and office number:	Cas van Vuuren 6-64
E-mail address:	tladisem@unisa.ac.za
Telephone number:	(012) 429 4292 +27 12 429 4292 (international calls)

PLEASE NOTE: Lecturers should be contacted regarding course content only.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Students must address all queries on administrative matters to:

Administrators:	Ms P Mofokeng
Building and office number:	Cas van Vuuren Building 6-157
E-mail address:	cbuslaw@unisa.ac.za
Telephone number:	012 429-8432 / 8774 +(27 12) 429-8432 / 8774 (international calls)
Fax number:	+(27 12) 429-8206 / 2094

5 STUDY MATERIAL

5.1 Tutorial material

The tutorial material for Legal Aspects of Electronic Commerce consists of the following:

- A study guide (only as specified in the learning units on myunisa);
- Tutorial letters;

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.

- Cases;
- Journal articles; and
- Legislation and international instruments

5.2 Prescribed textbook(s)

There is no prescribed textbook for this module. This means that you do not have to buy any books for this module. **You need the prescribed study material which comprises of: journal articles; cases; legislation and international instruments; and the tutorial letters.**

5.3 Resources

5.3.1 Recommended books

There are no recommended books for this module.

5.3.2 Additional books

The following are extracts from textbooks you should study for this module.

Buyts "Towards an electronic commerce policy for South Africa" *Cyberlaw: The Law of the Internet @ SA* (1 ed. Buyts (2000)) 97-112 [15]

Classen "Income tax and e-commerce" in *Cyberlaw @ SA III: The Law of the Internet* (3rd ed. Papadopoulos and Snail eds. (2012)) 95-109 [14]

Eiselen "e-Commerce" in *Information and Communications Technology Law* (2 ed. Dana van der Merwe (2016)) 149-181; and 195-220 [57]

Gereda "The Electronic Communications and Transactions Act" in Thornton *et al Telecommunications Law in South Africa* (2006) 262-295 [32]

Papadopoulos "An introduction to Cyberlaw" in *Cyberlaw @ SA III: The Law of the Internet* (3rd ed. Papadopoulos and Snail eds. (2012)) at 1-8 [8]

Papadopoulos "Online consumer protection" in *Cyberlaw @ SA III: The Law of the Internet* (3rd ed. Papadopoulos and Snail eds. (2012)) 63-93 [30]

Pistorius "Copyright Law and IT" in *Information and Communications Technology Law* (2 ed. Dana van der Merwe (2016)) 267-270; 292-362 [74]

Pistorius "Domain Names and Infringement of Trade Marks on the Internet" in *Information and Communications Technology Law* (2 ed. Dana van der Merwe (2016)) 221-265 [44]

5.3.3 Prescribed articles

For the purposes of assignments and examinations, a thorough knowledge of these articles is essential.

Hamann and Papadopoulos "Direct Marketing and Spam via Electronic Communications: An Analysis of the Regulatory Framework in South Africa" (2014) 47 (1) *De Jure* 42-62 [20]

Oguttu and Tladi "E-Commerce: A Critique on the Determination of a "Permanent Establishment" for income Tax Purposes from a South African Perspective" (2009) 20 (1) *Stell LR* 74-96 [22]

Papadopoulos "Short Message Services and e-Contracting: Jafta v Ezemvelo KZN Wildlife [2008] 10 BLLR 954 (LC) (2010) *Obiter* 188-200 [11]

Pistorius "Click-Wrap and Web-Wrap Agreements" (2004) 16 (4) *SA Merc LJ* 568-576 [9]

Pistorius and Tladi "The Hall of Shame: Double Standards for Spam" (2014) 26 (3) *SA Merc LJ* 688-705 [17]

5.3.4 Prescribed cases

Jafta v Ezemvelo Kzn Wildlife [2008] 10 BLLR 954 (LC) [26]

Ketler Investments CC t/a Ketler Presentations v Internet Service Provider's Association 2014 (2) SA 569 (GJ) [41]

Mxit Lifestyle (Pty) Ltd v Andre Steyn 2008 DomainDisputes.co.za ZA2008-00020 [19]

Spring Forest Trading v Wilberry (Pty) Ltd t/a Ecowash Combined Motor Holdings Limited (725/13) [2014] ZASCA 178; (2015) 2 SA 118 (SCA) [14]

Uponor Innovation AB & Uponor GmbH v Pieter Pretorius 2010 DomainDisputes.co.za ZA2010-0042 [11]

5.3.5 Prescribed extracts from book(s)

5.3.6 Prescribed legislation

International Instruments

- (a) Berne Convention for the Protection of Literary and Artistic Works ("the Berne convention");
- (b) WIPO Copyright Treaty ("WCT");
- (c) 15 USC (United States Trademarks Act);
- (d) UNCITRAL Model Law on e-Commerce (1996) and enactment; and
- (e) OECD Double Taxation Law

South African Legislation

- (f) Copyright Act 98 of 1978;
- (g) Consumer Protection Act 68 of 2008;
- (h) Electronic Communications and Transactions Act 25 of 2002;
- (i) Electronic Communications and Transactions Amendment Bill (2012);
- (j) Electronic Communications and Transactions Act 25 of 2002: Guidelines for Recognition of Industry Representative Bodies of Information System Service Providers (Government Notice 1283 in *Government Gazette* 29474 of 14 December 2006);
- (k) Electronic Communications and Transactions Act (25/2002): Alternative Dispute Resolution Regulations Government Notice R. 1166 in *Regulation Gazette* No. 8587 of 22 November 2006;
- (l) Protection of Personal Information Act of 2013; and
- (m) Trade Marks Act 194 of 1993.

6 HOW THE ASSIGNMENT SYSTEM WORKS

6.1 Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources or do research, you are actively engaged in learning.

6.2 General remarks

You must submit your assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned contact assign@unisa.ac.za.

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 Commentaries and feedback on assignments

Commentaries on the assignments will be sent to all students registered for this module, and not only to those students who submitted the assignments. 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 learning and should help you to be better prepared for the examination.

6.4 Submission dates (Please note that you must submit the two assignments SEPARATELY).

The closing dates for the submission of the assignments are:

ASSIGNMENTS		
Detailed information on the assignments is posted on <i>myUnisa</i> . In summary you will do five assessments. All assignments are to be submitted on <i>myUnisa</i> .		
Assignment No.	Description	Due date: Semester 1 and 2
Assignment 01	Individual- on <i>myUnisa</i>	Date to be advised
Assignment 02	Individual- on <i>myUnisa</i>	Date to be advised

6.5 Purpose of the Assignment

The assignment is an extremely important part of the module. In the assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (merely copying the study material is not acceptable)
- pre-examination assessment: this is the only opportunity before you write the examination for us to assess your ability to answer examination-style question.

6.6 General approach to essay-type assignments

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. However, there are three easy steps to accomplish this:
 - **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - Use the study material to **finalise** your summary with **references to case law** and other relevant authority.
- You are expected to consult cases and legislation when answering an assignment, and to

then cite these materials as authority in your answer. **Do not refer to sources you have not personally consulted.**

Quotations from case law and other sources must be kept to a minimum. All quotations must be **accurate** and **acknowledged** fully.

- 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. Similarly, it is unacceptable for students to copy anything from the Internet or from any other source without acknowledgement and to pass it off as their own work. **That will amount to plagiarism and all students concerned will be given a zero grade.** Furthermore, these students may be subjected to disciplinary proceedings of the University.
- **Names of cases and Latin expressions** must either be underlined or typed in italics. **Neatness** is a prerequisite. **Plan** your answers in advance.
- We **restrict the length of assignment answers** to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.
- Please **ensure that your name and address, student number, module and module code, and assignment number are written clearly on the assignment cover.** This information must be correct.
- Remember that your assignment must have precisely the same number as that given in this tutorial letter.
- It is wise to **make a copy of the assignment** before submitting it, in case your assignment gets lost if the electronic submission fails.
- **Make sure that you submit your written assignments before or on the closing date. No extensions will be granted for the submission of assignments.**

7 HOW THE EXAMINATION SYSTEM WORKS

7.1 Examination admission

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students, who do not submit the compulsory assignment before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

Submission of assignment 02 is not compulsory in the sense that it will not grant you admission to the examination. However, the mark obtained for this assignment will count towards your final mark.

The marks obtained for the assignments will, provided you obtain an examination mark of at least 40% count up to 20% of your final mark. You need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark. You need to obtain a final mark of 50% (combined examination mark and year mark) to pass this module.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May 2018. If you are registered for the second semester you will write the examination in October 2018.

7.3 Examination paper

At the end of the semester you will write **one paper** on Legal Aspects of Electronic Commerce. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home. The examination must then be submitted on *myUnisa*.

7.4 Examination date

Semester 1

Date to be advised

Semester 2

Date to be advised

Please ensure that you will be available during these periods as no deferments or extensions will be permitted. If you fail to write an examination you will forfeit your fees.

Should the examination dates for two or more of your modules fall on the same day, you must contact the Administrator immediately so that special arrangements can be made for the submission of your answers.

Enquiries regarding examination results must please be forwarded to exams@unisa.ac.za

8 ASSIGNMENTS AND ASSESSMENT CRITERIA

Your answers to assignment questions should **not** exceed four typed pages. Your answer to **all** assignments must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

ASSIGNMENTS FOR SEMESTER 1**ASSIGNMENT 01: DATE TO BE ADVISED****QUESTION 1**

List five legal challenges that electronic commerce poses. (5)

Explain the extent to which the Electronic Communication and Transactions Act of 2002 has addressed these challenges. (10)

(5)

[15]

QUESTION 2

Compare and contrast the challenges addressed in the ECT Act with the following:

(a) The UNCITRAL Model on Electronic Commerce of 1996. (5)

(b) The SADC Model Law on Electronic Transactions and Electronic Commerce of 2012. In your answer briefly explain what impact the SADC Model will have on the South African legislation and those of its neighbouring countries. (5)

(10)

TOTAL: [25 MARKS]

ASSIGNMENT 02: DATE TO BE ADVISED**QUESTION 1**

Choose one of the following cases and discuss the questions posed below:

Jafta v Ezemvelo KZN Wildlife [2008] 10 BLLR 954 (LC);

Ketler Investments CC t/a Ketler Presentations v Internet Service Provider's Association South 2014 (2) SA 569 (GJ); and

Questions

(a) Briefly state the facts of the case. (5)

(b) Identify and discuss the principle of law in the case. (5)

(c) What was the court's decision regarding the issues raised? (5)

(d) What is the impact of the case on the law? (5)

(e) What are the opinions of other authors regarding the principle discussed in the case? (5)

TOTAL: [25 MARKS]

ASSIGNMENTS FOR SEMESTER 2

[25 marks]

ASSIGNMENT 01: DATE TO BE ADVISED**QUESTION 1**

List five legal challenges that electronic commerce poses. (5)

Explain the extent to which the Electronic Communication and Transactions Act of 2002 has addressed these challenges. (10)

(5)

[15]

QUESTION 2

Compare and contrast the challenges addressed in the ECT Act with the following:

(a) The UNCITRAL Model on Electronic Commerce of 1996. (5)

(b) The SADC Model Law on Electronic Transactions and Electronic Commerce of 2012. In your answer briefly explain what impact the SADC Model will have on the South African legislation and those of its neighbouring countries. (5)

[10]

TOTAL: [25 MARKS]

ASSIGNMENT 02: **DATE TO BE ADVISED**

QUESTION 1

Choose one of the following cases and discuss the questions posed below:

Ketler Investments CC t/a Ketler Presentations v Internet Service Provider's Association South 2014 (2) SA 569 (GJ); and

Spring Forest Trading v Wilberry (Pty) Ltd t/a Ecowash Combined Motor Holdings Limited (725/13) [2014] ZASCA 178; (2015) 2 118 (SCA)

Questions

(a) Briefly state the facts of the case. (5)

(b) Identify and discuss the principle of law in the case. (5)

(c) What was the court's decision regarding the issues raised? (5)

(d) What is the impact of the case on the law? (5)

(e) What are the opinions of other authors regarding the principle discussed in the case? (5)

TOTAL: [25 MARKS]

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

Your Lecturer(s)

Dr S. TLADI