



**IMPORTANT INFORMATION:  
READ NOW**

**DEPARTMENT OF MERCANTILE LAW**

**LEGAL ASPECTS OF TRADITIONAL KNOWLEDGE AND BIODIVERSITY**

**IPSP089**

**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 Traditional Knowledge and Biodiversity (IPSP089) is one of the 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 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 these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module and have registered for the WIPO/UNISA Specialisation Programme in Intellectual Property Law 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 legal aspects of traditional knowledge and biodiversity 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 principles relating to intellectual property law to traditional knowledge and biodiversity situations, understand the

basic structure understand and functioning of intellectual property law pertaining to traditional knowledge and biodiversity, engage with selected legal texts pertaining to intellectual property law and traditional knowledge and biodiversity, pass on knowledge obtained through your studies to members of organisations or bodies concerned with traditional knowledge and biodiversity.

### 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 Traditional Knowledge and Biodiversity consists of the following:

- A study guide;
- 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 only study the prescribed study material which**

**comprises of: cases; journal articles; legislation; international instruments; and tutorial letters.**

### **5.3 Resources**

#### **5.3.1 Recommended books**

There are no recommended books for this module.

#### **5.3.2 Additional books**

There are no additional books that you should read for this module.

#### **5.3.3 Prescribed articles**

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

Amechi EP “Traditional Knowledge relating to medicinal uses of plants and the Patent regime in South Africa: Whither the Traditional Healers?” *SA Merc LJ* (2015) 27 1 58-91 **[33]**

Geyer S. “Towards a clearer definition and understanding of “indigenous community” for the purposes of the Intellectual Property Laws Amendment Bill 2010: an exploration of the concepts “indigenous” and “traditional” *PER/PELJ* (2010) 13 4 127-143 **[16]**

Masango CA “Indigenous Traditional Knowledge Protection: prospects in South Africa’s Intellectual Property Framework?” *SA Jnl Libs & Info Sci* (2010) 76 1 74-80 **[6]**

Saurombe A “The Protection of Indigenous Traditional Knowledge through the Intellectual property system and the 2008 South African Intellectual Property Law Amendment Bill” *Journal of International Commercial Law and Technology* (2009) 4 3 196-202 **[6]**

Simelane T “African Traditional Knowledge Systems and Biodiversity Management” *Africa Insight* (2009) 39 3 84-93 **[9]**

#### **5.3.4 Prescribed cases**

There are no prescribed cases for this course

#### **5.3.5 Prescribed legislation**

Legislation and international instruments that are relevant to this course are contained in the study guide.

## **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](mailto: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. 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:

<b>ASSIGNMENTS</b>		
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> .		
<b>Assignment No.</b>	<b>Description</b>	<b>Due date: Semester 1 and 2</b>
Assignment 01	Individual- on <i>myUnisa</i>	<b>Date to be advised</b>
Assignment 02	Individual- on <i>myUnisa</i>	<b>Date to be advised</b>

### 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 Traditional Knowledge and Biodiversity. 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*. For this reason, you should make sure that the Administrator always has your current fax number and e-mail address.

## 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](mailto:exams@unisa.ac.za)

## 8 ASSIGNMENTS

Your answers to the assignment questions should **not** exceed four typed pages. Your answer to the assignment 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**

Maca is a member of the radish family, related to rapeseed, Chinese cabbage, radish, and mustard. Common names of the species are: *maca*, *Peruvian ginseng* (English); and *maca*, *maka*, *maca-maca*, *maino*, *ayak chichira*, *ayak willku* (Quechua and Spanish). It grows at altitudes up to 4,300 meters, in the intense sun, wind, and cold of the barren highlands of the Andes. Maca has also long been valued for its ability to enhance fertility in humans and livestock. According to a study on maca produced by the International Plant Genetic Resources Initiative, maca was probably first domesticated in Junin between 1300 and 2000 years ago. Today it is cultivated primarily in the departments of Junin and Cerro de Pasco in Peru. It is most frequently consumed domestically as a health drink, often blended at the roadside or market stands with fruit or vegetables. In the Andes, indigenous people use it the same way they have for generations, as a potato-like food source and as a food supplement for livestock. The tuberous roots are dried, boiled, and made into jam and pudding. While it is appreciated for its rich vitamin and protein content, its value as a sexual performance and fertility enhancer is also part of its appeal. Riding the coattails of the Viagra phenomenon, in July 2001, two United States patents were granted to companies who claim to have 'unlocked maca's chemical secrets'. The patents at issue are on the components of the maca plant, not the plant itself. The active ingredients can be extracted in a number of different ways, and each company claims to have found the best method.

**Answer the following questions:**

- (a) Compare and contrast the terms "traditional knowledge" and "indigenous knowledge". In your answer state whether the *maca* plant falls within these definitions. (10)
- (b) How has knowledge been protected customarily? (10)
- (c) What are the problems confronting right holders (in our case the people in Junin Peru)? (10)



(d) What is WIPO's role in protecting traditional knowledge?

(20)

**TOTAL:****50****marks****ASSIGNMENT 02: DATE TO BE ADVISED****QUESTION 1**

Discuss the following in respect of traditional cultural expressions (expressions of folklore):

(a) Why is there a need to protect expressions of folklore? (20)

(b) The WIPO/UNESCO's Model provisions on this issue (30)

**TOTAL: [50 marks]****ASSIGNMENTS FOR SEMESTER 2****ASSIGNMENT 01: DATE TO BE ADVISED****QUESTION 1**

Maca is a member of the radish family, related to rapeseed, Chinese cabbage, radish, and mustard. Common names of the species are: *maca*, *Peruvian ginseng* (English); and *maca*, *maka*, *maca-maca*, *maino*, *ayak chichira*, *ayak willku* (Quechua and Spanish). It grows at altitudes up to 4,300 meters, in the intense sun, wind, and cold of the barren highlands of the Andes. Maca has long been valued for its ability to enhance fertility in humans and livestock. According to a study on maca produced by the International Plant Genetic Resources Initiative, maca was probably first domesticated in Junin between 1300 and 2000 years ago. Today it is cultivated primarily in the departments of Junin and Cerro de Pasco in Peru. It is most frequently consumed domestically as a health drink, often blended at the roadside or market stands with fruit or vegetables. In the Andes, indigenous people use it the same way they have for generations, as a potato-like food source and as a food supplement for livestock. The tuberous roots are dried, boiled, and made into jam and pudding. While it is appreciated for its rich vitamin and protein content, its value as a sexual performance and fertility enhancer is also part of its appeal. Riding the coattails of the Viagra phenomenon, in July 2001, two United States patents were granted to companies who claim to have 'unlocked maca's chemical secrets'. The patents at issue are on the components of the maca plant, not the plant itself. The active ingredients can be extracted in a number of different ways, and each company claims to have found the best method.

**Answer the following questions:**

(a) Compare and contrast the terms "traditional knowledge" and "indigenous knowledge". In your answer state whether the *maca* plant falls within these definitions. (10)

(b) How has knowledge been protected customarily? (10)

(c) What are the problems confronting right holders (in our case the people in Junin Peru) (10)

- (d) What is WIPO's role in protecting traditional knowledge? (20)

**Total: [50 marks]**

**ASSIGNMENT 02: DATE TO BE ADVISED**

**QUESTION 1**

Discuss the following in respect of traditional cultural expressions (expressions of folklore):

- (a) Why is there a need to protect expressions of folklore? (20)
- (b) The WIPO/UNESCO's Model provisions on this issue (30)

**Total: [50 marks]**

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

Your Lecturer(s)

**Dr S. Tladi**