

Legal Pluralism

Course Outline - 2015

Aim of the Course:

Welcome to Legal Pluralism. This course is a stand-alone semester course that counts for credit in the Faculty of Law for LLB as well as one of the courses in the Legal Theory 3 in the Faculties of Humanities, Commerce and Science. Students who pass Customary Law are exempted from the course in the LLB curriculum. It aims to provide knowledge on legal pluralism—which refers to the interaction of multiple normative systems (informal as well formal social norms) in a state. It will introduce students to the theoretical and methodological basis for the study of the coexistence of legal orders and the challenges this raises, and familiarise students with the debates on socio-legal concerns and the comparative perspectives of cross-cutting issues around pluralism. The course will stimulate debate and critical legal thinking on thematic issues such as the application of customary law and other religious norms in our courts, the interactions between human rights and customary/religious norms, Muslim and Hindu marriage laws, and issues around women's rights. Students will be encouraged to develop critical perspectives in light of their diverse historical and socio-economic backgrounds.

Expected Outcomes:

Students who have studied the course are expected to be able to:

1. Identify the socio-legal systems of the South African normative order.
2. Understand the operation of and tensions within a plural-legal society such as South Africa.
3. Demonstrate an understanding of the historical development of African customary law and problems associated with its application in the legal system.
4. Acquire capacity to conceive law in plural ways and understand law in comparative perspective, exceeding the level of formal law.

Topics:

Part A

1. Theories of legal pluralism and challenges to the concept of law.
2. Origins and evolution of legal pluralism in South Africa (History and application of African customary law and other socio-legal norms, transformative constitutionalism and the legitimisation of new forms of authority, traditional leadership and the Constitution).

3. Bill of Rights and customary/religious normative systems (case oriented study).
4. Marriage laws in comparative perspective (customary, Hindu, and Muslim norms)
5. Settlement of disputes in plural legal settings (Traditional courts, role of traditional institutions, relationship between state institutions and local institutions, informal systems of alternative dispute settlement).

Part B (Capita Selecta)

1. Ukuthwala
2. Customary property rights

Assessment:

Examination will account for 60% of the marks and term work 40%. Students will be expected to do one essay and write a test. The essay will be research related and students will be expected to deal with problems that are ordinarily not covered by lecturers, but which will be examinable, nonetheless. The dates and times of the assignment and test will be communicated during lectures.

Students should note that attendance of lectures is compulsory and they may not miss a maximum of six lectures, unless a satisfactory explanation is furnished. (Students should consult the Law Faculty's Survival Guide for rules regarding DPs and LOAs). It is every student's responsibility to sign the class register circulated during the lecture. The class register will serve as proof of attendance or non-attendance of lectures.

Selected Reading Materials:

1. C Rautenbach *et al*, Introduction to Legal Pluralism in South Africa, 4th edn. Lexis Nexis (2014)
2. L Mofokeng, Legal Pluralism in South Africa, Van Schaik (2009)
3. C Himonga *et al*, African Customary Law in South Africa, Oxford (2014)
4. J C Bekker, Seymour's Customary Law in Southern Africa 5 ed (1989)
5. TW Bennett, Customary Law in South Africa, Juta (2004)

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