



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

## Faculty of Law

Fakulteit Regsgeleerdheid  
Lefapha la Molao



# STUDY GUIDE

## *Department of Jurisprudence* **LAW AND TRANSFORMATION (AMR 410)**

## **PART I: GENERAL DEPARTMENTAL INFORMATION**

### **1. DEPARTMENT OF JURISPRUDENCE**

The course **Law and Transformation 410 (AMR 410)** is presented by the Department of Jurisprudence.

### **2. TEACHING PHILOSOPHY**

The Department of Jurisprudence strives towards critical, creative and independent thought and we remind ourselves and our students to be aware of, and to address, the post-apartheid social context and the demands of poverty, sexual violence, unequal power relations and HIV/Aids in our teaching and research. Members of the Department are committed to the values of transformation, equality, dignity, freedom, democracy and transparency as entrenched in the Constitution, and the values of integrity, honesty and modesty.

The module **Law and Transformation 410** focuses on the notion of transformation and explores its theoretical content as well as practical implications. Students are expected to investigate and develop a transformative jurisprudence / a jurisprudence of transformation. Issues to be considered include: human rights and democracy; transitional justice, constitutional sovereignty in South Africa; the notion of transformative constitutionalism; critical engagements with transformation; instantiations of transformation, revolution and decolonisation.

You will be required to attend all seminars, as well as to read independently – preparing for seminars and completing the assessments in the course.

### **3. COURSE LECTURER**

**JOEL MODIRI**

Law Building 2-17

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**Consultation hours:** Mondays 12:30 – 15:30; Wednesdays 11:00 – 14:00

#### **4. DEPARTMENTAL ADMINISTRATOR**

##### **MRS SUNÉT SLABBERT**

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**Office hours:** Monday – Thursday 07:30-15:00; Friday 07:30-13:00.

*General information can be obtained from the departmental administrator and messages for the lecturer can be left with her.*

## **PART II: LAW AND TRANSFORMATION 410**

### **1. SEMINARS**

This course is conducted by means of interactive double-period seminars. The main focus of the seminars is on unpacking the substantive content through discussion and engagement. This will require students to attend continually, **prepare readings in advance** and to participate actively. Failure to read in advance may result in difficulty following discussions and explanations.

Seminars are scheduled to take place on **MONDAYS, 15:30 – 17:20 IN LAW 1-31.**

### **2. ASSESSMENT**

For this course, students will be required to develop a research project based on theme and the content covered in the course. The chosen research project should culminate in the final examination essay.

The composition of the semester mark will be as follows:

- Attendance and participation (10%)
- Assignments (30% X 2 = 60%)
- Research proposal (30%)

**Information and instructions on the assignment and research proposal will be made available on ClickUp and in lectures.**

### **3. CLICKUP**

**The prescribed material listed below will all be placed on ClickUp.** Please consult the ClickUP website of AMR410 continuously for information pertaining to this module. Announcements, additional study material and other important information will be placed on ClickUP.

### **4. EXAMINATION**

The examination will consist of a prepared **essay** based on the research proposal. The essay is due on **3 NOVEMBER 2017.**

### **5. FINAL MARK**

The final mark is the average of the semester and examination marks. The semester mark counts 50% and the examination 50%. You must obtain an average of 50% to pass. You do, however, need to obtain **a sub-minimum of 40 %** in the examination in order to pass.

## **PART III: STUDY COMPONENT**

### **1. COURSE THEME (2017): “WHAT DOES CHANGING THE WORLD ENTAIL?”: CONQUEST, CONSTITUTIONALISM AND THE CALL(S) OF LIBERATION**

This year, the course will examine the relationship between law and social, cultural, political and economic transformation with reference to alternative, counter-hegemonic, critical theories of law, power and identity. In particular, we will explore the limits and pitfalls of liberal-democratic, rights-based and law-grounded forms and processes of change and counter these with alternative perspectives which emphasise cultural, psychological and economic liberation, decolonisation and revolution. Although we shall aim to read and think “globally”, the central focus of the course remains South Africa’s complex and contested process of constitutional transition which delivered, among other things, the Truth and Reconciliation Commission, the Constitution and the idea of the Rainbow Nation. But in contrast to most scholarly and public accounts which focus on apartheid, we shall situate our historical and political study of the “new South Africa” in the much longer history of colonial conquest, settler-colonialism and white supremacy.

How we understand the history of South Africa’s conflicts and contradictions affects how we ultimately respond to and address the problems of inequality, social disharmony and injustice. The limits of human rights, constitutionalism and transitional justice (as conceived in the South African context) may inhere in the fact that they focused on apartheid (1948 - 1994) – disenfranchisement, discrimination, exclusion, and abuse of State power – rather than conquest (1652 – [?]). From this alternative historical vantage point, we shall examine early critical responses to the democratic transition in South Africa from perspectives as varied as African philosophy, Marxist political economy and Africanist sociology together with more recent critiques of constitutionalism in South Africa. In search of alternative theories and conception of change, transformation, freedom, justice and revolution, we shall also engage with critical theories of human rights and revisit the lost archive of the Africanist/Azanian political philosophy of the Pan-Africanist and Black Consciousness movements. Non-western traditions of feminist philosophy will also be examined on their own terms and then read against the historical tensions between race,

class and gender as social categories (i.e ways of explaining how society is organised). We shall then relate our discussion to the concepts of sexual liberation and decolonisation.

The broad aim of the readings and conversations in this course will be to answer the question: “what does changing the world entail?” – what will it take for South Africans, indeed for the world, to overcome the injuries and devastations of colonial-apartheid? Is true and complete justice even possible in this current conjuncture of our times? How can humans develop more ethical and just ways of living and living-together? Throughout all our reading and discussion, we shall also aim to contextualise the prescribed texts within the present social context and current affairs.

The course thus adopts an expanded conception of jurisprudence, which locates law at the intersections of culture, politics and the humanities. Law in such a conception is but one mode of discourse and social organization, which sits alongside other vocabularies and disciplinary formations which seek to understand and organize social life. As such, the course adopts a broadly “critical” approach to law, and in this instance critique entails tracing the development of law and knowledge in terms of historical cracks and political traumas as opposed to a linear seamless progression. It entails as well a continual search for alternative and counter-hegemonic ways of thinking about law and justice. To this end, students will approach these theories with reference to the tensions between power and knowledge, theory and practice, critique and reconstruction. Inter-disciplinarity will therefore stand central to how the course is approached and how texts are read and issues debated.

This course involves frequent discussion, reading and thinking/analysis. Students will be required to be able to grasp the concepts and theories covered and to also be able to link these in developing an original research problem and essay topic.

## 2. SKILLS AND OUTCOMES

LAW AND TRANSFORMATION (AMR 410) is a **research-intensive course** in line with the University’s aim of developing the undergraduate research, writing and critical thinking skills of students and of ensuring a research-capable cohort of postgraduate students. It therefore aims to develop the following key abilities/skills/competencies at both a conceptual and technical level:

- The ability to read and analyse a text.
- The ability to identify the main or central argument of an author. In particular, ability to understand a theory or concept is of importance.
- The ability to evaluate an approach or argument in order to form one's own informed opinion.
- The ability to develop a conceptual argument based on a theoretical approach.
- The ability to critically analyse texts and to highlight contradictions, disagreements and differences in and between multiple texts and authors
- The ability to identify an underlying ideology or political viewpoint in a text – even when not expressly stated.
- The ability to conduct independent desktop research, which includes the ability to distinguish between primary and secondary sources and understanding of valid and invalid sources of information.
- The ability to understand, interpret and critically analyse theoretical arguments in order to gain deeper insight into their relevance for the contemporary social and political context
- The ability to read texts emanating from different disciplines in order to comprehend the inherently inter-disciplinary character of law and legal study.
- The ability to plan, structure, write and edit an essay.
- The ability to comply with basic rules of form, structure, style and language in academic writing.
- The ability to use sources ethically and to acknowledge sources relied upon accordingly. This entails understanding the ethical and practical reasons for referencing.
- The ability to integrate multiple sources of information in formulating an argument in one's words and from one's own viewpoint. This includes the ability to grasp and apply a theory or idea to a problem different to the one in the original text and the ability to see the relevance of "classic" texts from earlier historical periods and from different geopolitical contexts to local and contemporary issues.

- The ability to move from a summary to an original argument - that is, to be able to distil a core premise of an author's argument and to use it in building your own argument.

This is a final year elective in which students are expected to read beyond the narrow confines of the discipline of law and to comprehend theories and ideas in their political, historical and social context.

Each seminar will involve a discussion of the relevant texts with reference to the particular theme or problem being explored and throughout this discussion, debates, questions, opinions and thoughtful provocations are encouraged. The course is structured in such a way as to allow lecturers, guest lecturers and students to engage robustly. New and unorthodox readings of texts, as well as lively interest in contemporary culture and politics, will be encouraged, as will the integration of the prescribed texts with independent research material.



## PART IV: OUTLINE OF SEMINARS

### SEMINAR 1 : WEEK STARTING 24 JULY 15:30 IN LAW 1-31

#### INTRODUCTION TO THE COURSE

- Outline of theme
- Discussion of Study Guide
- **Joel M Modiri** “The Time and Space of Critical Legal Pedagogy” (2016) 27 Stellenbosch LR 507 – 534.

### SEMINAR 2: WEEK STARTING 31 JULY 15:30 IN LAW 1-31

#### THE HISTORICAL MAKING OF SOUTH AFRICA I: CONQUEST AS CONTEXT

- **John Saul and Patrick Bond** *South Africa – The Present as History: From Mrs Ples to Mandela & Marikana* (2014) Jacana Media: Johannesburg 15 – 62.
- **Patrick Wolfe** “Settler colonialism and the elimination of the native” 2006 *J of Genocide Research* 387 – 409.
- **RECOMMENDED: George Fredrickson** *White Supremacy: A Comparative Study of American and South African History* (1982) Oxford University Press: New York.

### SEMINAR 3: WEEK STARTING 14 AUGUST 15:30 IN LAW 1-31

#### THE HISTORICAL MAKING OF SOUTH AFRICA II: CONQUEST AS CONTEXT

- **Mogobe B Ramose** “I conquer, therefore I am the sovereign: Reflections upon sovereignty, constitutionalism, and democracy in Zimbabwe and South Africa” in PH Coetzee and APJ Roux (ed) *The African Philosophy Reader* (2003) 543 – 549 [“the cultural context of colonization”].
- **Charles W Mills** “White Supremacy as a Sociopolitical System: A philosophical Perspective” in A Doane and E Bonilla-Silva (eds) *White-Out: The Continuing Significance of Racism* (2003) 35 – 48.

#### **SEMINAR 4: WEEK STARTING 21 AUGUST 15:30 IN LAW 1-31**

##### **REFLECTIONS ON THE SOUTH AFRICAN TRANSITION I: CRITICAL RESPONSES**

- Excerpts from **Sampie Terreblanche** *Lost in Transformation* (2012) KMM Review: Sandton.
- **Mogobe B Ramose** “Reconciliation and Reconciliation in South Africa” (2012) *J of African Philosophy* 20 – 39.
- **Mogobe B Ramose** “An African Perspective on Justice and Race” (2001) *Polylog* <<http://them.polylog.org/3/frm-en.htm>>.
- **Mahmood Mamdani** “When Does Reconciliation Turn into a Denial of Justice?” in CH Heyns and K Steffens (ed) *Human Rights, Peace and justice in Africa* (2006) PULP: Pretoria 372 – 383.

#### **SEMINAR 5: WEEK STARTING 28 AUGUST 15:30 IN LAW 1-31**

##### **REFLECTIONS ON THE SOUTH AFRICAN TRANSITION II: EMERGING CRITIQUES**

- **Tshepo Madlingozi** “Social Justice in a Time of Neo-apartheid Constitutionalism: Critiquing the Anti-black Economy of Recognition, Incorporation and Distribution” (2017) 28 *Stellenbosch LR* 123 – 147.
- **Mabogo More** “Fanon and the Land Question in (Post)Apartheid South Africa” in Gibson, N (ed) *Living Fanon: Global Perspectives* (2011) Palgrave Macmillan: New York 173 - 186.
- **Sanele Sibanda** “Not Purpose Made! Transformative Constitutionalism, Post-independence Constitutionalism and the Struggle to Eradicate Poverty” (2012) 23 *Stellenbosch LR* 482 - 500.

#### **SEMINAR 6: WEEK STARTING 4 SEPTEMBER 15:30 IN LAW 2-33**

##### **REFLECTIONS ON THE SOUTH AFRICAN TRANSITION III: THE LIMITS OF LAW, RIGHTS AND CONSTITUTIONALISM**

- **Wendy Brown** “Suffering the Paradoxes of Rights” in W Brown and J Halley (eds) *Left Legalism/Left Critique* (2002) 420 – 434.

- **Wendy Brown** "The Most We Can Hope For ... 'Human Rights and the Politics of Fatalism'" 2004 SAQ 451-463.
- **Makau Mutua** "Hope and Despair for a New South Africa: The Limits of Rights Discourse" (1997) 10 *Harvard Human Rights J* 63 - 114.
- **Iris Marion Young** "Five Faces of Oppression" in *Justice and the Politics of Difference* (1990) 39 – 65.

#### **SEMINAR 7: WEEK STARTING 11 SEPTEMBER 15:30 IN LAW 1-31**

##### **RACE AND HISTORY IN THE AFRICANIST TRADITION**

- Excerpts from **Anton Lembede** *Freedom in Our Lifetime: The Collected Writings of Anton Muziwakhe Lembede* (2015) Kwela Books: Cape Town.
- **Robert Sobukwe** "Speeches of Mangaliso Sobukwe" 6 – 47.
- Excerpts from **Steve Biko** *I Write What I Like: A Selection of His Writings* (2012 [1978]) Picador Africa: Johannesburg.
- **RECOMMENDED:** **Gail Gerhart** *Black Power in South Africa: The Evolution of an Ideology* (1978) University of California Press: Berkeley, CA.

#### **SEMINAR 8: WEEK STARTING 18 SEPTEMBER 15:30 IN LAW 1-31**

##### **RACE, CLASS, GENDER: INTERSECTIONS / PROBLEMATISATIONS**

- **Charles W Mills** "European Specters" in *From Class to Race: Essays in White Marxism and Black Radicalism* (2003) 150 – 154; 158-159.
- **Kimberle Crenshaw** "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 *Stanford LR* 1241 - 1299.
- **Hortense J Spillers** "Mama's Baby, Papa's Maybe: An American Grammar Book" (1987) 17 *Diacritics* 64 – 81.

### **SEMINAR 9: WEEK STARTING 26 SEPTEMBER 15:30 IN LAW 1-31**

#### **AFRICAN / POSTCOLONIAL / DECOLONIAL FEMINIST INTERVENTIONS**

- **Nkiru Nzegwu** “Feminism and Africa: Impact and Limits of the Metaphysics of Gender” in K Wiredu (ed) *A Companion to African Philosophy* (2004) 560 – 569.
- **Chandra T Mohanty** “Under Western Eyes: Feminist Scholarship and Colonial Discourses” (1988) 30 *Feminist Review* 61 – 88.
- **Maria Lugones** “The Coloniality of Gender” (2008) *Worlds & Other Knowledges* 1- 17.

### **SEMINAR 10: WEEK STARTING 9 OCTOBER 15:30 IN LAW 1-31**

#### **LIBERATING SEXUALITIES AND REVOLUTIONARY POLITICS**

- **bell hooks** “Selling Hot Pussy: Representations of Black Female Sexuality in the Cultural Marketplace” in *Black Looks: Race and Representation* 61 – 77.
- **Catherine MacKinnon** “Sexuality, Pornography and Method: Pleasure Under Patriarchy” (1989) 99 *Ethics* 314 – 346.
- **Drucilla Cornell and Stephen Seely** “There’s Nothing Revolutionary About a Blowjob” (2014) 32 *Social Text* 1 – 24.

### **SEMINAR 11: WEEK STARTING 16 OCTOBER 15:30 IN LAW 1-31**

#### **DECOLONISATION, JUSTICE, THE FUTURE**

- **Eve Tuck and K Wayne Yang** “Decolonisation is not a Metaphor” (2012) 1 *Indigeneity, Education & Society* 1- 40.

### **SEMINAR 12: WEEK STARTING 23 OCTOBER 15:30 IN LAW 1-31**

#### **REFLECTIONS AND WRAPPING UP**

- Final instructions for exam essay

**WHILE THIS COURSE HAS BEEN SEPARATED INTO DISTINCT THEMES, THEY WILL BE JOINTLY FOCUSED ON WITHIN A SET OF BROADER THEMES, WHICH INCLUDE:**

1. The relationship between:
  - *Law, history and justice*
  - *Law, society and politics*
  - *Law, theory and critique*
  - *Law, social change and transformation*
2. The intersection and collision of multiple politicized identity formations (centrally race, class, gender, and sexuality) and law's relation to politicized identity.
3. The historical and geopolitical context within which a particular approach or theory develops and the role of history and ideology in understanding of the content of knowledge and ideas.
4. The historical and present influence of slavery, colonialism and apartheid in contemporary understandings of law, society and the Self.
5. The conceptual and political differences between:
  - Liberal and radical approaches
  - Substantive/concrete and symbolic forms of change
  - Assimilationist / integrationist formulations of social change (universalism) and identity-based politics or local nationalisms (particularity)
  - Forms of change centred on reform and inclusion and those centred on revolution or fundamental change
  - Legal transformation as compared to political, social, cultural and psychological transformation
  - Democratisation and decolonisation
  - "Post-apartheid" jurisprudence and "post-conquest" jurisprudence
6. The tensions between "Western" and "non-Western" epistemologies and discourses

## WRITING GUIDELINES

Each essay should be made up of 3 parts: an introductory section, a body made up of different focused sections and a concluding section.

The essay must start with an **introduction**. In the introduction, you:

- Identify the question/topic/problem you will be discussing;
- indicate how you will answer the question - in other words which theories and theorists you will be discussing and how will be approaching them;
- indicate what your own perspective/ argument is - in other words what you will conclude at the end of the essay.

The **body** of the essay must consist of different sections focused on a particular aspect of the argument and each section should consist of different paragraphs.

- Each paragraph should discuss one related idea. Therefore, each new idea should ideally be started in a new paragraph.
- Each of the paragraphs should be logically linked to and build onto one another.
- Write in full sentences – and avoid bullets or half sentences.
- The headings in the body (for each of the sections) should be descriptive of the particular aspect of the argument. Do not write a heading titled “Body”.
- You must develop an argument. In other words, discuss what is asked in such a manner that it can assist you in making a broader point. Do not merely provide summaries!

Your essay must then also have a **conclusion**. In the conclusion, you need to tie everything together and wrap up your argument.

- These paragraphs mirror your introduction – in other words in your introduction you set out to do certain things and in the conclusion, you confirm that you have done them.
- No new ideas or arguments should be introduced in the conclusion.

### Theories, theorists, concepts

You must ensure that you explain, discuss and present the various theories and theorists correctly.

- Make sure that you relate the part of a theory relevant to the topic or question at hand.
- Define all concepts that you use correctly and relate theme to the theory correctly. Note also that some concepts may differ in contextual or theoretical meaning from their ordinary dictionary definition.
- Take not to make contradictory or careless remarks that are not supported by the theories, theorists and concepts you rely on.

## **Formal presentation**

### Structure and organisation of text

- Essays must have an original and descriptive title.
- Use clear and descriptive headings to structure the “body”.
- Use paragraphs to structure your arguments.
- Make sure that there is a logical, ‘easy’ flow from one paragraph to the next. The last sentence of one paragraph opens up the idea/ line of thought/ argument of the next.
- Deal with one idea/ discussion in a paragraph.
- Use different sections to address the various aspects of the argument that you want to discuss – if linked to a research proposal, the sections should be structured according to your research questions.
- Avoid long sentences. If a sentence is too long rather break it up in shorter sentences.
- Use numbered headings to indicate the different sections and subsections. Do not get lost in too many different levels of headings (1.; 1.1; 1.1.1; 1.1.1.1; 1.1.1.1.1 etc). A rule of thumb is not to go past three levels of headings (1.; 1.1; 1.1.1).
- The essay should have an introduction (reworked version of the research proposal that states the research problem, assumptions, research question, method/ approach, motivation (including a short background/ context of the problem, reason why it is important to be investigated and a literature review of the main authors/ theories to be discussed).
- Body consisting of the various sections addressing the research questions as identified initially in the research proposal, now in the introduction. The relevant theorists/ theories should be described and analysed. The body should include also a section in which you apply the theories to your research problem – indicate clearly how the theories that you described/ analysed/ developed address your research problem/topic.
- Text should be justified and typeset at 1.5 spacing. Use a clear, legible and simple font (Arial, Times New Roman, Tahoma, book Antiqua) at 12pt.

### Language, consistent use of terminology and punctuation

- All words must be spelled correctly and essay should undergo thorough editing, proof-reading and proof-reasoning.
- All sentences should end with a full stop. Punctuation marks should be used where appropriate.
- Ensure that concepts, phrases etc are used consistently throughout the text. The same applies with gender pronouns.

### Referencing and style

- Verbatim quotations should be kept to an absolute minimum. Always paraphrase where possible.

- Short quotes that are placed in the text with the use of quotation marks; and longer quotes are indented.
- References to sources should be included throughout the essay. Students may use any referencing style as long as it is consistent and comprehensive.
- Footnotes are used for two purposes – to make points that are only ancillary to the main arguments presented in the text; and for referencing purposes
- A footnote comes at the end of the last punctuation mark – normally at the end of a full stop but also at the end of a comma if more than one footnote in a sentence.
- The general rule with respect to footnote referencing/citation is again style consistency and that it must make sense, but make sense for what purpose?
- The purpose of referencing is a) to provide all necessary information to enable the reader to follow up on the reference for own further research; b) to give due recognition to the source relied on in the text (that is, the source of the idea, argument, information, perspective, insight that appears in the text). This means that your referencing must be as comprehensive as required for these two purposes.