

FUR2601

(473567)

October/November 2014

FUNDAMENTAL RIGHTS

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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MISS MS MOOKI

MRS A SPIES

Closed book examination

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This examination paper consists of four (4) pages.

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:

1. ANSWER ALL FOUR QUESTIONS. DO NOT SEPARATE THE SUBSECTIONS OF A QUESTION
2. QUESTION 1 – SECTION A MUST BE ANSWERED ON A SEPARATE MARK-READING SHEET.
3. ANSWER EACH QUESTION ACCORDING TO THE MARKS ALLOCATED TO IT
4. REFER TO RELEVANT CASE LAW, WHERE APPLICABLE

Question 1 – Section A

- 1 1 In *President of the Republic of South Africa and Another v Hugo*, the Constitutional Court held that the decision of the President granting a remission of sentence to all imprisoned mothers with minor children under the age of 12, but not to the fathers, amounted to unfair discrimination. This statement is (2)
- 1 false, because such a decision has an adverse impact on the respondent and invaded his right to dignity
 - 2 true, because all prisoners are regarded as being vulnerable in our society and have been victims of discrimination in the past

TURN OVER

- 3 true because this was an example of discrimination based on the grounds of gender which could not be saved by the limitation clause
- 4 false, because it amounted to fair discrimination as its purpose was to achieve an important societal goal
- 1 2 The Tshwane Metro Council plans to evict a number of squatters from land that has been earmarked for a housing project. The Council has the right to evict the squatters and demolish their dwellings. This statement is (2)
- 1 true, because fair procedure does not apply to illegal occupants
- 2 false, because evictions can only occur once a court order has been granted
- 3 false, because South Africans are allowed to squat anywhere in the country
- 4 true, because the actions of the Council amount to an administrative decision
- 1 3 A decision by the Independent Electoral Commission (IEC) that prisoners will not be allowed to vote in the forthcoming elections qualifies as law of general application. This statement is (2)
- 1 true, because the Electoral Act denies prisoners the right to vote
- 2 false, because the Electoral Act does not deny prisoners the right to vote
- 3 true, because this qualifies as executive rulemaking
- 4 false, because this decision is accessible and has been published
- 1 4 Formal equality refers to sameness of treatment. This statement is (2)
- 1 true, because this means that the law must treat individuals the same regardless of their circumstances
- 2 false, because it requires an examination of the actual social and economic differences between groups and individuals
- 3 true, because formal equality refers to sameness of treatment in the workplace only
- 4 false, because substantive equality refers to sameness of treatment
- 1 5 The common-law rule that criminalises gay sodomy infringes the right to human dignity. This statement is (2)
- 1 true, because this statement was confirmed by the Constitutional Court in *National Coalition for Gay and Lesbian Equality v Minister of Justice*
- 2 false, because in *National Coalition for Gay and Lesbian Equality v Minister of Justice* the court said that it does not amount to the violation of dignity
- 3 true, because this statement was confirmed by the Constitutional Court in *Minister of Home Affairs v Fourie and Another*
- 4 false, because in *Minister of Home Affairs v Fourie and Another* the court said that it does not amount to the violation of dignity

Section B

- 1 6 List the requirements that have to be met in order to obtain *locus standi* when a person is seeking to act in the public interests (2)
- 1 7 Differentiate between the following concepts
Reading in and reading down (3)
- 1 8 Discuss whether and to what extent a juristic person can rely on the protection of the Bill of Rights. For instance, can *Noseweek*, an independent magazine, invoke the right to life and the right to freedom of expression? (5)
- 1 9 What is the relationship between the Constitution and the Bill of Rights? (5)
[25]

Question 2

- 2 1 Discuss whether or not magistrates' courts can develop common law in accordance with the Constitution (5)
- 2 2 Discuss the Constitutional Court's recent decision in *Hassam v Jacobs* specifically with regard to the application of the equality test as laid down in *Harksen v Lane* (10)
- 2 3 Explain the different stages of fundamental rights litigation. In your answer, refer to the procedural and substantive issues a court will have to consider (10)
[25]

Question 3

- 3 1 Discuss the following statement with reference to case law

Human dignity is not only a justiciable and enforceable right that must be respected and protected, it is also a value that informs the interpretation of possibly all other fundamental rights and is of significance in the limitations enquiry (10)

- 3 2 Describe how (i) public international law and (ii) foreign law may influence the interpretation of the South African Bill of Rights (5)

TURN OVER

3 3 Differentiate between the following concepts

- Declaration of invalidity and declaration of rights (4)
 - Formal and substantive equality (4)
 - Fair and unfair discrimination (2)
- [25]**

Question 4

- 4 1 Does Chapter 2 of the Constitution (the Bill of Rights) apply to the following? Give reasons for your answers
- a) An interim interdict issued by a magistrates' court (2)
 - b) A will in terms of which a female descendant is prevented from inheriting the deceased estate (2)
 - c) A decision by Parliament to adopt a new Immigration Act (2)
 - d) The requirement that only people between the ages of 20 and 40 may apply for membership of a gymnasium (2)
 - e) A decision by a private school to expel five learners (2)
- 4 2 Mention two ways in which a declaration of invalidity may be controlled (2)
- 4 3 Should an applicant approach the court on behalf of another person, what must the applicant show? (2)
- 4 4 List five factors relevant to the awarding of constitutional remedies (5)
- 4 5 What is the meaning of "context" in constitutional interpretation? (6)
- [25]**

TOTAL: {100}

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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For use by examination invigilator
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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