

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS



FUR2601

(490941)

May/June 2015

FUNDAMENTAL RIGHTS

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

MR TW MASEKO

DR A SPIES

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Closed book examination

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This exam paper consists of four (4) pages

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:

1. ANSWER ALL FOUR QUESTIONS DO NOT SEPARATE SUBSECTIONS OF THE QUESTIONS.
2. QUESTION 1 SUBSECTION A MUST BE ANSWERED ON A SEPARATE MARK READING SHEET
3. TAKE NOTE OF THE WAY IN WHICH THE MARKS ARE ALLOCATED AND ADAPT YOUR ANSWERS ACCORDINGLY.
4. REFER TO RELEVANT CASE LAW WHERE APPLICABLE.

QUESTION 1

SUBSECTION A: ANSWER ON MARK READING SHEET

Indicate whether the following statements are "True" or "False" by selecting the correct answer.

- 1 1 The Constitutional Court favours a grammatical method of interpretation of the Rights in the Bill of Rights (2)
- 1) False, the Constitutional Court's preferred method of interpretation is a generous and purposive method of interpretation
 - 2) True, the Constitutional Court only favours a grammatical method of interpretation
 - 3) False, the Constitutional Court only favours a generous method of interpretation
 - 4) False, the Constitutional Court only favours a systematic method of interpretation

TURN OVER

- 1 2 Reading in is a constitutional remedy that is used to remedy an omission in a statutory provision (2)
- 1) False, because it is a method of statutory interpretation
 - 2) False, because it is not recognised by s172 of the Constitution
 - 3) True, because its purpose is to add words to cure the defect
 - 4) True, because it is the same as severance
- 1 3 The Bill of Rights applies to the conduct of a farm owner who refuses to provide housing for a group of squatters (2)
- 1) True, the Bill of Rights applies to everyone and private owners are bound by section 26 of the Constitution
 - 2) False, private owners cannot be held to have a duty in terms of section 26(2) of the Constitution, given the nature of the duty and the fact that the section only refers to the state's obligation to provide housing
 - 3) True, private land owners are bound by section 25 of the Constitution
 - 4) False, private owners are only bound in terms of common law
- 1 4 The Constitutional Court has jurisdiction to hear any matter, if leave to appeal is granted and the matter is of such importance that it ought to be considered by the Constitutional Court (2)
- 1) False, in terms of section 167 of the Constitution the Constitutional Court can only hear constitutional matters
 - 2) True, section 167 of the Constitution has been amended by the Constitution Seventeenth Amendment Act of 2012 granting it jurisdiction to hear any matter
 - 3) False, in terms of section 167 of the Constitution the Constitutional Court can only hear constitutional and criminal matters
 - 4) True, section 167 of the Constitution has been amended by the Constitution Eleventh Amendment Act of 2012 granting it jurisdiction to hear any matter
- 1 5 The general limitation clause can meaningfully be applied to all rights in the Bill of Rights (2)
- 1) True, because all rights are textually unqualified
 - 2) True, because all rights have demarcations
 - 3) False, because some provisions contain internal demarcations that repeat the phrasing of section 36
 - 4) False, because some provisions contain external demarcations that repeat the phrasing of section 36

[10]

TURN OVER

SUBSECTION B:

- 1 6 Mention two ways in which a declaration of invalidity may be controlled (2)
- 1 7 What are the three forms of democracy recognised by the Constitution? (3)
- 1 8 What are the main considerations to be taken into account during the procedural stage of fundamental rights litigation? (3)
- 1 9 Does the bill of rights apply to the following? Give reasons for your answer
- (a) an Act of Parliament (1)
 - (b) a municipal by-law (1)
 - (c) a court order (1)
 - (d) the imposition of a fine by a traffic officer (1)
 - (e) a decision by UNISA to expel a student (1)
- 1 10 Should an applicant approach the court on behalf of another person, what must the applicant show? (2)

[25]**QUESTION 2**

- 2 1 Does South African law make provision for so-called class actions? Discuss critically (5)
- 2 2 Explain the role of public opinion in the interpretation of the Bill of Rights. Refer to relevant case law (10)
- 2 3 What is the meaning of context in constitutional interpretation? (5)
- 2 4 Can the general limitation clause in section 36 of the Constitution be applied to all rights in the Bill of Rights? (5)

[25]**QUESTION 3**

- 3 1 List five factors relevant to the awarding of constitutional remedies (5)
- 3 2 Is reading down a constitutional remedy? How does it differ from severance and reading in? (10)

TURN OVER

- 3 3 Is section 9(2) which provides for affirmative action measures, an exception to sections 9(3) and 9(4) of the Constitution? Discuss (5)
- 3 4 List five provisions in the Constitution which mention human dignity (5)

[25]**QUESTION 4**

- 4 1 Ms Fortune discovers that she has leukaemia. On her way home, she is so upset by the news that she skips a red traffic light and is involved in a car accident. She is taken to hospital in a very serious condition. With reference to constitutional provisions and case law, discuss whether (and to what extent) she can demand emergency medical treatment (5)
- 4 2 Does a provision in a law requiring all medical doctors (but not members of any other profession) to do community service qualify as a law of general application? (2)
- 4 3 What is the two-stage approach to the limitation of fundamental rights (2)
- 4 4 What is a structural interdict and for which cases are they best suited? (2)
- 4 5 Explain the term "justiciability" (2)
- 4 6 When can a juristic person rely on the protection of the Bill of Rights? (2)
- 4 7 What was the approach of the Constitutional Court to the justiciability of socio-economic rights in the *Certification* judgment? (5)
- 4 8 Who, in terms of section 38 of the Constitution, has standing to approach the court in respect of a violation of a fundamental right? (5)

[25]**TOTAL: {100}**

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
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For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
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Specimen only