

FUR2601

(482223)

May/June 2013

FUNDAMENTAL RIGHTS

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

MR TW MASEKO

MISS MS MOOKI

MRS A SPIES

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

This paper consists of 4 pages plus instructions for the completion of a mark-reading sheet.

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.

- A 1 Franco Seedorf, a German soccer player, has a three-year contract to play for a South African Club Franco is, therefore, entitled to vote in the next general elections (2)
- 1) False, because foreign soccer players are not allowed to vote
 - 2) True, because our Constitution is similar to the German Constitution
 - 3) True, because foreign nationals are entitled to all the rights in the Constitution
 - 4) False, because political rights are only granted to citizens of the country

TURN OVER

- A 2 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
- A 3 You are a legal adviser to the Pretoria City Council. The Council plans to evict a number of squatters from its land that has been earmarked for a housing project. The Council has the right to evict the squatters and demolish their dwellings (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
- A 4 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
- A 5 The customary law rule of male primogeniture, in terms of which wives and daughters are not allowed to inherit where the testator has died without a will, infringes the right to human dignity (2)
- 1) False, because this statement was confirmed by the Constitutional Court in *Booyens v Magistrate of Khayelitsha*
 - 2) False, because this statement was confirmed by the Constitutional Court in *Minister of Home Affairs v Watchenuka*
 - 3) True, because this statement was confirmed by the Constitutional Court in *Minister of Home Affairs v Fourie*
 - 4) True, because this statement was confirmed by the Constitutional Court in *Bhe v Magistrate Khayelitsha*

[10]

SUBSECTION B

- B 1 What is the basis for the distinction between socio-economic rights on the one hand and civil and political rights on the other? (3)
- B 2 What is the difference between formal equality and substantive equality? (2)

TURN OVER

- B 3 What is a structural interdict and for which cases are they best suited? (2)
- B 4 What is the two-stage approach to the limitation of fundamental rights? (2)
- B 5 Does a provision that allows all medical doctors (but not members of any other professions) to do community service qualifies as a law of general application? (2)
- B 6 Can an insurance company invoke the right to life? (2)
- B 7 What are the requirements to obtain *locus standi* when a person would like to act in the public interest? (2)
- [15]**

QUESTION 2

- 2 1 Identify and discuss the procedural questions a court will have to consider in fundamental rights litigation? (5)
- 2 2 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 newspaper, invoke the right to life and the right to freedom and expression of the person? (5)
- 2 3 What is meant by standing (*locus standi in iudicio*), and why is it important? (5)
- 2 4 When should a court apply the Bill of Rights directly to legislation, and when should it rather interpret legislation in conformity with the Bill of Rights? (5)
- 2 5 Discuss whether or not magistrate's courts can develop common law in accordance with the Constitution (5)
- [25]**

QUESTION 3

- 3 1 Ms Axel Rod is an ambitious 26 –year old attorney who works for Sugar and Bean, a firm of attorneys. A month ago, Ms Rod discovered that she was two months pregnant. Since she was not married, she decided to raise the child as a single mother. A month later, Ms Rod was fired from her job at Sugar and Bean on the grounds that she would no longer be able to perform her duties at the firm in an efficient manner. Her job required her to work long hours, and, being a single mother, it was thought that she would no longer be committed to her clients.

Apply the criteria laid down by the Constitutional court in *Harksen v Lane* with regards to the unfair discrimination in Ms Rod's case (10)

- 3.2 Mbala Babu is a learner at a state high school in Tshwane. He is expelled from school because he is black, does not attend any Christian church and is a Rastafarian. Mbala alleges that his exclusion from the school is *unconstitutional*.

Is the high school bound by the Bill of Rights? In your answer, refer to the relevant provisions of the Constitution (5)

- 3.3 Critically evaluate the merits of the following statement. Substantiate your answer with reference to case law.

“our constitution demands a value-laden approach to constitutional interpretation. During such a process the role of the text itself is minimal, if not negligible.” (10)
[25]

QUESTION 4

- 4.1 Discuss suspension of declarations of invalidity as one of the ways in which the courts can regulate the impact of a declaration of invalidity in terms of section 172 of the Constitution (5)
- 4.2 Discuss severance as one of the ways in which the courts can regulate the impact of a declaration of invalidity in terms of section 172 of the Constitution (5)
- 4.3 The Gauteng Department of health decides to reduce the treatment given to Aids patients who have contracted tuberculosis. This is due to a shortage of funds and the Department's inability to meet the demands placed on it. However, painkillers and sedatives are still available. Is this decision constitutional? Substantiate your answer with reference to case law (10)
- 4.4 “Affirmative action is not an exception to the right to equality, but is a means of achieving equality understood in its substantive or restitutionary sense.” Give a critical evaluation of this statement (5)
[25]

TOTAL. {100}

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 DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
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For use by examination invigilator
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IMPORTANT

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS
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