

FUR2601

(478736)

October/November 2013

FUNDAMENTAL RIGHTS

Duration 2 Hours

100 Marks

EXAMINERS ·
FIRST
SECONDMR TW MASEKO
MRS A SPIES

Closed book examination.

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This 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.

- A 1 Franco Seerdorf, a German soccer player, has a three-year contract to play for a South African soccer club. Franco is therefore entitled to vote in the next general elections in South Africa (2)

- 1) False, because foreign soccer players are not allowed 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 South Africa

TURN OVER

- A 2 The Constitutional Court has exclusive jurisdiction to declare an Act of Parliament unconstitutional (2)
- 1) True, because it is the highest court in South Africa
 - 2) False, because a High Court or the Supreme Court of Appeal may declare an Act of Parliament unconstitutional, but subject to confirmation by the Constitutional Court
 - 3) True, because the Constitutional Court consists of 11 judges
 - 4) False, because it shares a concurrent jurisdiction with the Equality Courts to declare an Act of Parliament unconstitutional
- A 3 A magistrates' court may declare a municipal by-law unconstitutional. (2)
- 1) True, because a magistrates' court is a creature of statute and, therefore, empowered to declare a municipal by-law unconstitutional
 - 2) False, because a municipal by-law is handled by the traditional courts
 - 3) True, because a municipal by-law governs the area of the magistrates' court's jurisdiction
 - 4) False, because a magistrates' court as a creature of statute may not pronounce on the constitutionality of any law
- A 4 A magistrates' court may interpret legislation in accordance with the Bill of Rights (2)
- 1) True, because this was confirmed by the Constitutional Court case of *Masiya v The Director of Public Prosecution*
 - 2) False, because a magistrates' court may not apply the Bill of Rights
 - 3) True, because a magistrates' court may apply the Bill of Rights indirectly in terms of section 39(2)
 - 4) False, because only the High Court and Supreme Court of Appeal may interpret legislation in accordance with the Bill of Rights
- A 5 The South African Broadcasting Corporation (SABC) can invoke the right to freedom of expression (2)
- 1) True, because all the rights in the Bill of Rights are for everyone, which includes both natural and juristic persons
 - 2) False, because the nature of the SABC is such that exercising this right is not part of its business
 - 3) False, because the nature of this right is such that it cannot be exercised or invoked by a juristic person.
 - 4) True, because there is nothing about the nature of this right that makes it impossible for juristic persons to invoke it.

SUBSECTION B

B 1 Does the Bill of Rights apply to the following? Give reasons for your answers

- 1 1 A decision by Parliament to adopt a new Immigration Act. (2)
- 1 2 A decision by a private school to expel five learners. (2)
- 1 3. An interim interdict issued by a magistrate's court (2)
- 1 4 The requirement that only people between the ages of 20 and 40 may apply for membership of a gymnasium (2)
- 1 5 A will in terms of which a female descendant is prevented from inheriting the deceased estate (2)

B 2 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 3 What is the two-stage approach to the limitation of fundamental rights? (2)
[25]

QUESTION 2

2 1 Discuss the difference between the direct and indirect application of the Bill of Rights (10)

2 2 What is meant by standing (*locus standi in iudicio*), and why is it important? (5)

2 3 Billy Jean, who has just completed his LLB degree, applies to Garlick & Ginger, a firm of attorneys, for a position as an articled clerk. His application is turned down because he wears his hair in dreadlocks and, in his CV openly confesses to smoking dagga, which, in Garlick & Ginger's opinion, is not in keeping with the image of their firm. Advise Billy on the following matters

- (i) whether he can bring an action in the Constitutional Court,
 (ii) if so, the procedural issues that will have to be established,
 (iii) the substantive issues that will be considered,
 (iv) who will bear the onus of proof at these different stages of litigation (10)
 [25]

TURN OVER

QUESTION 3

- 3 1 Does the text play any role in the interpretation of the Constituion or the Bill of Rights? Is textual (literal or grammatical) interpretation sufficient or conclusive? Answer this question with reference to relevant case law (10)
- 3 2 Is reading down a constituional remedy ? How does it differ from severance and reading in? Refer to case law (10)
- 3 3 Can the general limitation clause in section 36 be applied to all rights in the Bill of Rights?(5)
[25]

QUESTION 4

- 4 1 Explain in your own words how the Constitutional Court approached the idea of unfair discrimination in *Harksen v Lane* (5)
- 4 2 Why is the equality clause such an important provision? (3)
- 4 3 You are a legal adviser to the Pretoria City Council. The Council plans to evict a number of squatters from its land. The land has been earmarked for a housing project. Answer the following questions
- a) May the council evict the squatters and demolish their dwellings? (2)
- b) What procedure should be followed in order to do so? (5)
- 4 4 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)
[25]

TOTAL: {100}

