

**FUR2601**

( 474031) October/November 2015

**FUNDAMENTAL RIGHTS**

Duration 2 Hours

100 Marks

**EXAMINERS ·**

**FIRST**

**SECOND**

**DR A SPIES**

**DR TW MASEKO**

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Closed book examination.

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This examination question paper consists of five (5) 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.**

**TURN OVER**

**QUESTION 1****SUBSECTION A: ANSWER ON MARK READING SHEET**

**Indicate the correct answer.**

- 1 1 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 2 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 3 In the substantive stage, the onus is first on the respondent, who must show that he/she infringed the applicant's rights. (2)
- 1) False, in the substantive stage, the onus is first on the applicant, who must show that an infringement of a right has taken place
  - 2) True, in the substantive stage, the onus is first on the respondent, who must show that he/she infringed the applicant's rights
  - 3) False, in the substantive stage the onus is on the respondent to indicate that the applicant's rights can be limited
  - 4) False, in the substantive stage, the onus is on the applicant, to show that the infringement is not justifiable in terms of section 36 of the Constitution

**TURN OVER**

- 1 4 Immigration authorities are entitled to deport all illegal immigrants immediately, as they are not protected by the 1996 Constitution (2)
- 1) True, if the immigrants are not legally in the country they cannot lay claim to protection under the South African Constitution
  - 2) False, in terms of section 33 of the Constitution, every person has the right to just administrative action
  - 3) True, in terms of section 33 of the Constitution, only citizens have the right to just administrative action
  - 4) False, immigrants are entitled to all the rights in the Bill of Rights
- 1 5 In terms of section 38(b) of the Constitution, a person acting on behalf of another person who cannot act in their own name has to have personal interest in the remedy sought (2)
- 1) False, in terms of section 38(b) of the Constitution a person cannot act on behalf of another person who cannot act in their own name
  - 2) True, in terms of section 38(b) of the Constitution, a person acting on behalf of another person who cannot act in their own name has to have personal interest in the remedy sought
  - 3) False, in terms of section 38(b) of the Constitution, a person acting on behalf of another person who cannot act in their own name has to have sufficient interest in the remedy sought
  - 4) True, in terms of section 38(b) of the Constitution, a person acting on behalf of another person who cannot act in their own name has to have personal interest in the remedy sought including permission from the person

[10]

**SUBSECTION B:**

- 1 6 What are the requirements for a jurstic person to rely on the protection of the Bill of Rights? (3)
- 1 7 What does "the conduct of organs of state" refer to? (4)
- 1 8 Which courts have jurisdiction to develop the common law in accordance with the Bill of Rights? (2)
- 1 9 Is it possible to approach the Constitutional Court directly circumventing the High Court and Supreme Court of Appeal? Discuss (3)
- 1 10 Is it necessary for the rules of a private school to comply with the provisions of the Bill of Rights? Discuss (3)

[15]  
{25}

TURN OVER

**QUESTION 2**

- 2 1 Shortly after she had been appointed as CEO of Posh Bank, Ms Gold was fired because she disclosed that she was HIV-positive. She then became a member of an organisation called Treating All Patients (TAP), which aims solely at advocating for the rights of HIV-positive people. TAP wishes to institute an action in the Constitutional Court on behalf of Ms Gold. Answer the following questions
- (a) Does Ms Gold have standing to approach the court? If so, on what grounds? (3)
- (b) Does TAP have standing to approach the court? Refer to case law (5)
- 2 2 Why should contextual interpretation be used with caution? Explain the two dangers presented by contextual interpretation (8)
- 2 3 Do the following examples qualify as a law of general application? Give reasons for your answers
- (a) A provision in law requiring all medical doctors (but not members of any other profession) to do community service (2)
- (b) A decision by the airport authorities that no public meetings will be allowed on the airport premises, where such a decision has not been published (2)
- 2 4 Is section 9(2) which provides for affirmative action measures, an exception to sections 9(3) and 9(4) of the Constitution? Discuss (5)
- [25]**

**QUESTION 3**

- 3 1 Discuss two ways in which the courts can regulate the impact of a declaration of invalidity in terms of section 172(1)(a) and (b) of the Constitution (10)
- 3 2 Section 38 of the Constitution provides that a court may grant "appropriate relief" where a right in the Bill of Rights has been infringed. Explain this term briefly, giving examples of such relief (5)
- 3.3 In your opinion, do the following laws and conduct infringe the right to human dignity? Give reasons for your answers
- (a) a common law rule which criminalises gay sodomy (3)
- (b) 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 (3)
- (c) the initiation of first-year students, where they are required to strip and crawl naked through a garbage dump. (2)

TURN OVER

- 3.4 Should an applicant approach the court on behalf of another person, what must the applicant show? (2)  
[25]

**QUESTION 4**

- 4.1 Ms M Masipa applied to the Sunnyside Boys' High School, a state school, for admission. At the interview, she was told that it was school policy to admit only boys. She was advised that there were many other single-sex schools in the region and that all school activities were designed for male learners. If female learners were admitted, significant changes would have to be made. For example, the school would have to make arrangements for bathrooms and change rooms for girls. The school believes that it is not acting unfairly. Ms Masipa asks your advice on this issue. There is a girls' high school 15 minutes away, but she lives next door to this school and she wants to attend it. She would also like to take woodwork and Latin, which are not offered at the girls' high school.
- (a) Explain to Ms Masipa which of her constitutional rights may be at issue (5)
- (b) Apply the criteria laid down by the Constitutional Court in *Harksen v Lane* to Ms Masipa's case to establish whether her rights have indeed been violated (10)
- 4.2 What was the approach of the Constitutional Court to the justiciability of socio-economic rights in the *Certification* judgment? (5)
- 4.3 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)  
[25]

**TOTAL: {100}**

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

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For use by examination invigilator  
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| <p><b>IMPORTANT</b></p> <ol style="list-style-type: none"> <li>USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET</li> <li>MARK LIKE THIS </li> <li>CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY</li> <li>ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT</li> <li>CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY</li> <li>CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY</li> <li>CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED</li> <li>DO NOT FOLD</li> </ol> | <p><b>BELANGRIK</b></p> <ol style="list-style-type: none"> <li>GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI</li> <li>MERK AS VOLG </li> <li>KONTROLEER OAT U VOORLETTERS EN VAN REG INGEVUL IS</li> <li>VUL U STUDENTENOMMER VAN LINKS NA REGS IN</li> <li>KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET</li> <li>KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS</li> <li>MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS</li> <li>MOENIE VOU NIE</li> </ol> |
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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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21	22	23	24	25	58	59	60	61	62	91	92	93	94	95	126	127	128	129	130
28	27	28	29	30	63	64	65	66	67	96	97	98	99	100	131	132	133	134	135
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Specimen only