

TUTORIAL LETTER 201/1/2018

Fundamental Rights FUR2601

Department of Public, Constitutional &
International Law

IMPORTANT INFORMATION

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Dear Student

This tutorial letter contains the memorandum for the first and second compulsory assignments.

1 MEMORANDUM FOR COMPULSORY ASSIGNMENTS

1.1 FIRST COMPULSORY ASSIGNMENT

Here you were only required to indicate whether the following statements are True or False.

Questions:

1. Vertical application of the Bill of Rights refers to the application of the Bill of Rights to a dispute between private parties, where the constitutionality of legislations is not at issue. **(2)**

1) True, vertical application of the Bill of Rights is only applicable between private parties.

2) False, vertical application refers to the application of the Bill of Rights to a dispute which concerns the constitutionality of legislation, or a dispute to which the state is a party.

3) False, the Bill of Rights can only be applied horizontally.

4) True, with vertical application of the Bill of Rights the constitutionality of legislation is always not at issue.

Correct answer :2

2. The Bill of Rights does not provide for so called “class actions”. (2)

1) True, class actions coincide with the narrow approach to standing which was rejected by the Constitutional Court in *Ferreira v Levin NO and Others*

2) False, section 38(c) of the Constitution provides for anyone acting as a member of, or in the interest of, a group or class of persons.

3) True, class actions refer to the common law position of standing which has been replaced by section 38 of the Constitution.

4) False, section 38(a) of the Constitution provides for anyone acting as a member of, or in the interest of, a group or class of persons.

Correct answer :2

3. The Constitution makes provision that a matter can be brought directly to the Constitutional Court. (2)

1) False, the Constitutional Court is only an appeal court and can never hear a matter directly.

2) True, the Constitution makes provision that any matter can be brought directly to the Constitutional Court.

3) True, the Constitution makes provision that a matter can be brought directly to the Constitutional Court, only if the matter is of such public importance or urgency that direct access will be in the interest of justice.

4) False, it is not the Constitution but only the rules of the Constitutional Court that allows for direct access.

Correct answer : 3

4. 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.

Correct answer :1

5. The Constitutional Court applies a standard of reasonableness in establishing whether the state has achieved the progressive realization of the socio-economic rights provided for in the Constitution.

1) True, although a considerable margin of discretion is given to the state when deciding on how it is to go about fulfilling socio-economic rights, the reasonableness of the measures that it adopts can be evaluated by a court.

2) False, section 26, 27 and 29 of the Constitution provides for minimum core obligations that need to be fulfilled and if this is not the case the state can be held accountable.

3) True, the Constitutional Court applies a standard of reasonableness in determining whether the state has given effect to the immediate realization of socio-economic rights.

4) False, the Constitutional Court applies a standard of rationality to determine if the state's fulfilment of socio-economic rights is based on rational policy.

Correct answer : 1

[10]

1.2 SECOND COMPULSORY ASSIGNMENT

Question:

Following a terrorist attack in Johannesburg, a number of Pakistani Muslims and South African citizens from Arab descent were arrested and detained without trial, and tortured by police while their assets were frozen in terms of a South African anti-terrorist Act passed by parliament to prevent a similar attack as the one in the United States of America in 2011.

More or less at the same time, the management of Unisa decided that African students from Eastern Africa could no longer be registered at Unisa, prompting the government to close down the University for a violation of its policy of an African renaissance.

Against the background of the hypothetical case scenario, refer to the relevant provisions of the Constitution and applicable case law when responding to the following questions:

1. Identify the constitutional rights which are infringed by:
 - 1.1 government; and
 - 1.2 Unisa.

(5)

Answer:

1.1 A number of constitutional rights have been infringed by the government. These include:

- Sec 12(1) – The Right to freedom of security of the person, which includes the right not to be deprived arbitrarily or without just cause, not to be detained without trial, to be free from all forms of violence from either public or private sources, and not to be tortured.
- Sec 14 – The right to privacy, which includes the right not to have their person or home searched, their property searched, and their possessions seized.
- Sec 15 – The right to freedom of religion, belief and opinion.
- Sec 25(1) – The right to property, which includes the right not to be deprived of ones' property except in terms of a law of general application.
- Sec 9 – The right to equality and non-discrimination.

1.2 The following rights have been infringed by Unisa:

- Sec 29 – The right to education.
- Sec 9 – The right not to be unfairly discriminated against on the grounds of religion, belief, and ethnic or social origin.

2. Can the Pakistani citizens and the students from Eastern Africa claim protection under the Bill of Rights? Would they have *locus standi* before the South African courts to enforce any of their constitutional rights? (5)

Answer:

Pakistanis and students from Eastern Africa can claim protection of the Bill of Rights, The Constitution provides that the Bill of Rights enshrines the rights of all people (including foreigners) in the country – sec7(1). They are therefore entitled to all the rights in the Bill of Rights, with the exception of those expressly reserved for citizens (for example sec 19(3) the right to vote).

Moreover, anyone listed in sec 38 of the Constitution has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened and the court may grant appropriate relief. They would, for instance, have *locus standi* to act in their own interest. [10]

2 CONCLUSION

We hope that the additional material and information will help you to prepare for the examination and we wish you every success with your studies.

Your lecturers