

SOCIAL SECURITY LAW NOVEMBER 2021 MEMO

QUESTION ONE

Salome approaches you at the UJ Law Clinic for legal advice and assistance. She states that she is a single mother of two, a nine-year old girl, Hloniphile, who is currently in primary school and Thabo, a four-year-old who was born with cerebral palsy and so lives with a congenital disability. She states further that she is currently six months pregnant and is deeply worried because since informing her employer about the pregnancy “nothing has been said” and she fears that she is likely going to lose her job.

She is also concerned about the wellbeing of her other children. Hloniphile attends the local primary school which was running a feeding scheme for all the learners but the school has since shut down this scheme, citing the pressures of COVID19. Thabo requires special equipment, including a wheelchair, and she is worried about the costs of this equipment.

With reference to appropriate legal authority, advise Salome about her and her children’s rights and remedies if any.

[15]

MARKING GUIDELINE

In general students will be assessed on their ability to provide critical advice, drawing on the relevant authorities. The answer will be evaluated in light of the quality of their understanding of the material. However, as final years, students must not only show understanding of the material, but should also refer to relevant authority. For this reason, when allocating marks a student can pass but cannot do well if they only answer broadly, without reference to any authority. Students should also outline both the rights and the remedies that are available.

The problem question has three principal components.

Salome’s entitlement to maternity protections

[5 marks]

Care dependency grant in respect of Thabo

[3 marks]

Hloniphile’s right to basic nutrition, and the best-interests principle

[5 marks]

QUESTION 2

The National Department of Health (NDOH) has approached you to draft a legal opinion on the constitutional prospects of the National Health Insurance scheme (NHI). The NDOH has taken note of parliamentary submissions that have been made by a number of interest groups. These submissions argue that the government will not be able to ensure quality of care through the NHI, and that therefore the NHI constitutes a retrogressive step in violation of the right to health. They also argue that COVID19 has only underscored the potential pitfalls of the NHI, not least because of continuing allegations of corruption within public financing systems.

Draft a legal opinion to the NHI. Your opinion, which must draw on appropriate legal authority, should set out what the purpose of the NHI is, how the Bill envisages achieving that purpose, the content of

the government's obligations with respect to the right to health, and indicate whether you think there is any legal basis for the interest groups' submissions.

[15]

MARKING GUIDE

The essay question is framed in a relatively open-ended way, and so markers have significant discretion in terms of allocating and assessing marks. It should be assessed similarly to how the assignments were assessed. Is the student capable of developing and sustaining a legal argument, supported by relevant authority?

Below, I outline some of the themes that a student could raise in their essay. In general, students should be penalised if they do not critically assess the NHI scheme – they need to show that they have formulated their own views.

To pass, students must explain why the NHI has been proposed (UHC and parallel systems of public/private care), must link this to the right to health and how that right has been understood by the courts, and must show some evidence of being able to formulate their own views.

To do well, students must assess the objections that have been advanced against the NHI. It is not necessary for all of these objections to be comprehensively assessed to do well – there are multiple entry points to this answer.

Some further guidelines follow below.

<u>Right to health and government's obligations</u>	[3 marks]
<u>Purpose of NHI</u>	[4 marks]
<u>How Bill envisages achieving those purposes</u>	[2 marks]
<u>Assessing the objections</u>	[4 marks]
<u>Overarching argument</u>	[2 marks]

QUESTION THREE

The Covid -19 pandemic has highlighted the importance social protection and the role of government play in alleviating the plight of the poor. The South African government's payment of a R350 grant to cushion individuals in distress has reignited the debate on whether the state must introduce a Universal Basic Income Grant (UBIG). Considering this development, write a short memorandum to the Minister of Social Development for presentation to the cabinet, about the advantages and disadvantages as well as the feasibility of introducing a UBIG. In your memorandum, briefly address the link between poverty and colonialism and the relevance of decolonising social assistance in the country.

[15]

The memorandum must include

1. The advantages of UBIG

2. The disadvantages of UBIG
3. A detailed description of the effects of colonialism in SA i.e.
 - Autocracy in the political sphere – tricameral parliament (white, Indian and coloured)
 - Spatial segregation – Group areas Act
 - Civil liberties – freedom of movement, Immorality Act
 - Education and employment
4. Expand on the Education and employment aspect
5. Explain poverty and social exclusion
6. Explain the state's S27 constitutional mandate
7. Explain the link between poverty and comprehensive social protection (Taylor report).

QUESTION FOUR

The Mjolo Pension fund is registered under the Pension Funds Act 24 of 1956 and has been operational in the country for the past 10 years. Recently, a number of its members held 'secret meetings' where they discussed what they termed 'cost-cutting' measures. Amongst the proposals put forward for 'confrontations' with the board are the dissolution of the board and the appointment of an administrator to run the fund; the reduction of the number of board members from 6 to only 2; the forfeiture of benefits if a member 'leaves' before retiring; and finally, the termination of the auditor's contract to make use of final year accounting students who although being paid less, will be gaining experience.

- a) Advise the concerned members about the implementation of their plan. [8]
- b) Outline the procedure to be followed when one is dissatisfied with a decision of a Fund. In your opinion, should disgruntled members be allowed to approach the High Court directly? [7]

[15]

The plan to dissolve the Board and appoint an administrator cannot be implemented because,

- S7A of the Pension Funds Act is prescriptive, every Fund must have a board.

The reduction of board members from 6 to 2 may be implemented subject to a successful application for exemption

- S7B makes provision for fewer board members (less than 4) where permission has been granted by the Registrar subject to certain condition (see S7B and the subsections thereto).

The proposal on the forfeiture of benefits cannot be implemented because,

- S14 provides for the payment of benefits to members and a Fund is obligated to pay any member who is leaving.
- A member also has a 15G Right to share in surplus accounts on exit (S15G)

The proposal to use final year students can also not be implemented because,

- S9(1) of the Act directs that every Fund must appoint an auditor registered under the Auditing Profession Act, 2005 (except if to be audited by the auditor general)