



**PROGRAM** : NATIONAL DEGREE: LLB; BCOM (Law); BA (Law)  
**SUBJECT** : **LEGAL SKILLS**  
**CODE** : LSK 41A0  
**DATE** : JULY (SICK) EXAM 2021  
**DURATION** : 150 minutes  
**TOTAL MARKS** : **50**

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**MODERATOR** : PROF DS DE VILLIERS

**NUMBER OF PAGES** : The question paper consists of 11 pages (including this page) and a judgment which has been uploaded separately.

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### **INSTRUCTIONS**

1. This paper consists of **four** questions.
2. Answer all the questions in full.
3. This is an open-book examination. You may use your notes and other materials given out by the lecturer, **but you are not allowed to communicate or share information with other students in any circumstances**, or to copy and paste answers from the internet.

4. Do not copy and paste your lecture slides as answers. You need to show that you can interpret and apply the information using your own words.
5. Your answers will be tested for plagiarism.
6. You have 2 ½ hours to complete the exam. The exam starts at 08:30 and ends at 11:00.
7. Click the “save” button from time to time.
8. Answer the questions on Blackboard. Do not submit via e-mail unless you have been in contact with the lecturers and they have given you special permission.
9. With the Multiple Choice Questions choose your answer carefully. You will either get it right or wrong i.e. no marks will be given for partially correct answers.
10. You will be given **ONE** opportunity to submit.
11. Use your time wisely. Beware of spending too much time on the shorter questions and then failing to complete the long questions.
12. You are welcome to contact Dr Hall ([jhall@uj.ac.za](mailto:jhall@uj.ac.za)) or Ms Cachalia ([raisac@uj.ac.za](mailto:raisac@uj.ac.za)) or Ms Badenhorst ([lawmentor@uj.ac.za](mailto:lawmentor@uj.ac.za)) should you experience any issues while completing the exam.

## **QUESTION 1**

- 1.1 Identify the secondary sources of law in the list below. (You may choose more than one).
- a. United Nations Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
  - b. Canadian Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations, 2005
  - c. National Environmental Management: Waste Act 59 of 2008
  - d. Waste Classification and Management Regulations, 2013
  - e. I Ahmed “The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: A Legal Misfit in

Global Ship Receiving Jurisprudence” 2019 *Washington International Law Journal* 411

- f. *Gauteng Department of Agriculture and Rural Development & others v Interwaste (Pty) Ltd & Others* (458/2018) [2019] ZASCA 68 (30 May 2019)

[2]

- 1.2 On 1 April 2021 Waste Solutions (Pty) Ltd disposed of 500 kilograms of waste lithium batteries to landfill (a waste dump). On 20 June 2021 waste lithium waste batteries were listed as a hazardous waste under the Hazardous Waste Management Act, 2019. Section 12 of the Act states that no one may dispose of more than 500 kilograms of a hazardous waste to landfill and that all listed wastes must be incinerated (burnt). Section 48 of that Act makes contravening section 12 an offence. Has Waste Solutions (Pty) Ltd committed an offence?

- a. Yes, Waste Solutions (Pty) Ltd contravened section 12 read with section 48.
- b. No, because Waste Solutions (Pty) Ltd did not dispose of more than 500 kilograms.
- c. No, because the incinerator in the area was not operating and disposing of the waste to landfill was more environmentally responsible than leaving it to corrode in the weather.
- d. No, because Waste Solutions (Pty) Ltd disposed of the waste before the Hazardous Waste Management Act, commenced.

[2]

- 1.3 Write the following reference to a provision in an Act in words by filling in the blanks: 7(6)(ii).

\_\_\_\_\_ seven, \_\_\_\_\_ six, \_\_\_\_\_ ii.

[2]

- 1.4 Which of the following people can commission an affidavit *ex officio* (by virtue of their office)? Select the correct answer.

- a. policeman

- b. bank manager
- c. school teacher
- d. certain politicians

- a. a, b and c
- b. b, c and d
- c. a, b and d
- d. all of the above

[2]

1.5 Which of the following statements would you NOT include in an affidavit? (You may select more than one answer).

- a. I am a 20 year old student, who lives at 12 Main Road, Melville.
- b. On 20 May 2020 I was driving my mother's car; a Toyota Jazz with the number plate 'Cool Cat GP'.
- c. I collided with a taxi at the intersection of Jan Smuts Avenue and Chester Road.
- d. I believe that it was the taxi driver's fault.
- e. The taxi driver drove through a red traffic light.
- f. This is typical of the bad driving of taxi drivers in Johannesburg.
- g. The tow truck driver later told my mother that he thought the taxi driver was drunk.

[2]

1.6 Which of the following case citations is correct based on the *TSAR* referencing guideline?

- a. *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency (No 2)* 2014 (4) SA 179 (CC)
- b. *Allpay v SASSA (NO 2)* (2014) 4 SA 179 (CC)
- c. *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency (No 2)* 2014 4 SA 179 (CC)

- d. Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency (No 2) 2014 4 SA 179 (CC)

[2]

1.7 Which of the following statements about an *amicus curiae* is correct?

- a. friend of the court
- b. cannot be cited as a party to the litigation
- c. can be appointed by the court to make submissions
- d. represents underage litigants
- e. represents bankrupt litigants

- a. a and c
- b. a, b and c
- c. a and d
- d. a, d and e
- e. all of the above

[2]

1.8 During a political debate about the importance of protecting refugees from war stricken African countries, Mr A says that “*If we keep giving Asylum Seeker Permits to foreigners there will be no jobs left for South Africans!*”

Which of the following logical fallacies has Mr A committed? (You may choose more than one)

- a. ad hominem
- b. appeal to extremes
- c. strawman
- d. circular reasoning
- e. non-sequitur
- f. all of the above

[2]

1.9 Andile, Bongani and Charles divide their law firm's profits on the basis of 1:3:6. If the profits amount to R750 000 then what amount is each partner's share of the total?

- a. Andile gets R62 500; Bongani gets R187 500; Charles gets R375 000
- b. Andile gets R75 000; Bongani gets R225 000; Charles gets R450 000
- c. Andile gets R100 000; Bongani gets R300 000; Charles gets R600 000
- d. Andile gets R225 000; Bongani gets R375 000; Charles gets R225 000
- e. Andile gets R300 000; Bongani gets R100 000; Charles gets R600 000

[2]

1.10 A Toyota (driven by "A") and a BMW (driven by "B") collide on Jan Smuts Avenue. The accident was caused because A drove through a red light. A's Toyota has barely a scratch on it, but repairs to B's BMW will cost R250 000. A is fully liable for those costs. B also received a hospital bill for R85 000 for the treatment of his injuries. The medical report shows that B was not wearing a seat belt at the time of the accident, which made his injuries worse. If blame is apportioned at a percentage ratio of 80:20 for B's bodily injuries, where A is 80% liable and B is 20% liable, calculate the amount that A and B are each liable to pay based on their respective degrees of fault.

- a. A pays R268 000; B pays R67 000
- b. A pays R267 000; B pays R68 000
- c. A pays R318 000; B pays R17 000
- d. A pays R285 000; B pays R135 000
- e. A pays R68 000; B pays R317 000

[2]

[20]

## **QUESTION 2**

Your client is a non-governmental organisation (NGO) called *Save our children!* (SOC). They produced a film called *Fallen Angels* which tries to highlight the dangers of child pornography. The film contains three highly explicit scenes of young children

having sex with adults. A number of experts including criminologists and psychologists are interviewed in the film. Hints are also provided to parents on how best to protect their children from being victims of child pornography. They have recently been told by a government official that distributing the film without it being classified in terms of the Films and Publications Act 65 of 1996 may be an offence. They approach you to understand their legal obligations and what types of classification might apply to the film, or not.

**Read the extract of section 18 of the Act below. Draft a letter to SOC, in plain language (5 marks), explaining what their legal obligations are in terms of the section, what type of classifications could be applied to the film and which would be most likely to apply (5 marks).**

#### **18. Classification of films and games**

- (1) Any person who distributes, broadcasts or exhibits any film or game in the Republic shall in the prescribed manner on payment of the prescribed fee —
  - (a) register with the Board as a distributor or exhibitor of films or games; and
  - (b) submit for examination and classification any film or game that has not been classified, exempted or approved in terms of this Act or the Publications Act, 1974 (Act No. 42 of 1974).
- (2) The Board shall refer any film or game submitted under subsection (1)(b) to a classification committee for examination and classification.
- (3) The classification committee shall in the prescribed manner, examine the film or game referred to it and shall—
  - (a) classify the film or game as a “refused classification” if the film or game—
    - (i) contains child pornography, propaganda for war or incites imminent violence; or
    - (ii) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm, unless, judged within context, the

film or game is, except with respect to child pornography, a *bona fide* documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest;

(b) classify the film or game as “XX” if it depicts—

(i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;

(ii) bestiality, incest, rape, conduct or an act which is degrading of human beings;

(iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour;

(iv) explicit infliction of sexual or domestic violence; or

(v) explicit visual presentations of extreme violence, unless, in respect of the film or game, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified “X18” or classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials

(c) classify the film or game as “X18” if it contains explicit sexual conduct, unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; or

(d) if the film or game contains a scene which may be disturbing or harmful to, or age-inappropriate for children, classify that film or game with reference to the relevant guidelines issued by the Board by the imposition of appropriate age restrictions and such other conditions as may be necessary

to protect children in the relevant age categories from exposure to such materials.

- (4) Where a film or game has been classified as a “refused classification” or has been classified as “XX” or “X18”, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.
- (5) Where a film or game submitted to the Board in terms of this section contains child pornography, the chief executive officer shall refer that film or game to a police official of the South African Police Service for investigation and prosecution.
- (6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the purposes of broadcasting, be exempt from the duty to apply for classification of a film or game and, subject to section 24A (2) and (3), shall, in relation to a film or game, not be subject to any classification or condition made by the Board in relation to that film or game.

[10]

### **QUESTION 3**

Develop an argument that follows the **deductive form of a syllogism** based on the following scenario (situation). Your answer must include a major premise, a minor premise and a conclusion.

In terms of section 11 of the Banks Act, 1990 it is an offence for any entity to carry on the “business of a bank” if the entity is not a public company and it has failed to register as a bank in terms of the Act. One of the activities that qualifies as an entity carrying on the “business of a bank” is accepting deposits of money from the public as a regular part of the business.

ABC (Pty) Ltd has recently started approaching university students, encouraging them to invest small amounts in its saving scheme. ABC is not registered as a bank with the relevant authority.

[5]

#### **QUESTION 4**

Read the judgment in *Sithole and Another v Sithole and Another* (CCT 23/20) [2021] ZACC 7 (14 April 2021) which has been uploaded separately and answer the following questions.

4.1 The case name refers to two of the parties as “*Another*”. What are the names of these parties? [2]

4.2 What does the word “concurring” mean in the context below: [2]

*“TSHIQI J (Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J and Victor AJ **concurring**)”*

4.3 What is the key legal issue that the court was asked to decide in this case? Explain what this issue is about. [2]

4.4 What was the court *a quo*’s finding in respect of this legal issue? [2]

4.5 Explain, in your own words, the impact of the Black Administration Act, 1927 and Matrimonial Property Act, 1984 (as amended) on marriages between black people. [2]

4.6 Explain the Constitutional Court’s *ratio decidendi* in respect of the constitutionality of section 21(2)(a) of the Matrimonial Property Act, 1984. In your answer you must make specific reference to:

- 4.6.1 The broad legal approach and key judicial precedent that the court followed in deciding whether the legislative provisions violated section 9 of the Constitution (this does not need to be presented in the same level of detail as it is discussed in the judgment); and
- 4.6.2 How the court applied this approach to the facts of Mrs Sithole's case.

[5]

[15]

**TOTAL: 50 MARKS**