



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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MS R CACHALIA

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.

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 (ihall@uj.ac.za) or Ms Cachalia (raisac@uj.ac.za) or Ms Badenhorst (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 Which of the following is/ are true? (You may choose more than one answer).

- a. Acts are important because they represent the values of society as they are passed by Parliament which society has voted for to represent their interests*
- b. Two places where you can find the purpose of an Act are the long title and the definitions
- c. The version of the Act in the language which it was assented to has the same interpretation status as the translated version/s of the Act.
- d. Drafters of legislation use Schedules to include detailed information such as lists.*

- e. Definitions in an Act are intended to remind the reader what a word has a different meaning in the Act from the ordinary dictionary meaning.*

[2]

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

_____ seven, _____ six, _____ ii.

[2]

Section, subsection, item

- 1.5 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]

- 1.6 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]

1.7 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]

1.8 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]

- 1.9 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]

- 1.10 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]

- 1.11 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]

[22]

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]

Answer:

- **Plain language skills (5 marks)**
- **Explanation of legal obligations are in terms of the section (2 marks):**
 - **SOC must apply to be registered**
 - **Must submit the film for examination**
- **The type of classifications could be applied to the film (2 marks):**
 - **Section 18(3)(c) applies – the key is that the answer must reflect an insight that the film is a documentary and not pornography *per se*. The answer may also refer to (d) referencing that the film is disturbing to children. It is not (a) as the intention is not to produce pornography.**
- **Which classification would be most likely to apply (1 mark) – classified according to ‘the relevant guidelines’. *Note mark should be awarded if well motivated.***

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]

Answer:

Major premise: It is an offence (1 mark) for an entity who is not a public company (1/2 mark) to carry on the business of a bank without registering to do so ito s 11(1) of the Bank Act (1/2 mark)

Minor premise: ABC (Pty) Ltd is not a public company (1 mark) and has failed to register as a bank, even though it has been collecting deposits as a regular part of its business (1 mark)

Conclusion: Therefore, ABC has committed an offence (1 mark)

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]

Answer:

The parties names are: (1) the Commission for Gender Equality (1 mark) and; (2) Minister of Justice and Correctional Services (1 mark)

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

Answer:

- **Whether s 21(1)(a) of the Matrimonial Property Act 88 of 1984 is unconstitutional / whether High Court’s order declaring s 21(1)(a) unconstitutional should be confirmed (1 mark, either answer is fine).**
- **In deciding on this issue, the CC would have to decide whether this provision discriminates against black couples who were married ito**

of the Black Administration Act 38 of 1927 on the grounds of race and gender (1 mark)

4.3 What does the word “concurring” mean in the context below:

*“TSHIQI J (Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J and Victor AJ **concurring**)”* [2]

Answer:

The listed judges all agree with the reasoning and outcome of the judgment written by Tshiqi J.

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

Answer: The High Court concluded that s 21(1)(a) of the MPA was unconstitutional because it violates the right to equality in s 9 of the Constitution on grounds of race and gender (2 marks).

Note, students should not copy and paste from para 3 of the judgment but may be awarded marks if they refer to some of the other orders of the High Court eg, that all marriages concluded out of COP under the BAA would be deemed to be in COP as of the date of the court's order.

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]

Answer:

- **In general, couples married under the MPA would automatically be married in COP, whereas those married under the BAA would automatically be married out of COP (1 mark).**
- **However, the MPA sought to change this by introducing s 21(1)(a), which amended s 22 of the BAA. Flowing from this amendment, persons married out of COP in terms of the BAA would be given an opportunity to change their matrimonial property regime within two years. However, those parties who did not know that they could change their matrimonial property regime and those who were simply not aware that their marriages were automatically out of COP, or did not appreciate the legal consequences of this, would remain married out of COP. The upshot is that the default position is that these marriages under the BAA continue**

to be out of COP, unless the couples have taken steps to alter their matrimonial regime. (1 mark – markers should be lenient and mark for ‘gist’)

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.

Marking guidance: On the whole, this question should be marked generously with students being given marks for mentioning *Harksen v Lane* and then showing a general understanding of the Court’s reasoning as to why s21(1)(a) discriminates unfairly on grounds of race and gender. Specific marks can be allocated in the following manner:

- **Broad legal approach (max 2 marks):** Whether s 21(1)(a) of the MPA discriminates unfairly on grounds of race and gender must be determined with reference to the broad approach outlined by the Constitutional Court in *Harksen v Lane* (1 mark for mentioning this precedent), which is (i) whether a provision differentiates between people or categories of people; (ii) whether this differentiation is unfair because it is based on a listed ground; and (iii) And even so, can it be justified under s 36 (limitation clause) (1 mark – allocated leniently, and for gist)
- **Application of *Harksen v Lane* test (maximum of 3 marks):**

- **S 21(1)(a) clearly differentiates between black couples registered under the BAA and those of other races who register their marriages under s 21(1)(a) of the MPA by creating separate marital regimes to govern each category of marriage (1/2 mark)**
- **Discrimination is unfair on grounds of race and gender because: (1) it creates a separate but unequal marital regime for black couples since those married under the BAA enjoy less protection – ‘failure to level the playing field and place marriages of Black people under the same umbrella as marriages of couples of other racial groups’ (1 mark); and (2) has discriminatory consequences for women such as Mrs Sithole specifically eg, since men are frequently the breadwinners with the implication that all assets would often fall into estate of male spouses to the financial detriment of women and also considering the fact that many of these women would not have known that they could alter their marital regime. Even if they could, they would depend on their husbands for consent to alter their marital regimes. Mrs Sithole’s personal circumstances speak to both of these issues (1 mark)**
- **Unfair discrimination cannot be justified by s 36 of the Constitution – court could find no reason to save the constitutionality of s s21(1)(a) (1/2)**

[5]

[13]

TOTAL: 50 MARKS

