



MEMORANDUM

PROGRAM : NATIONAL DEGREE: LLB; BCOM (Law); BA (Law)
SUBJECT : **LEGAL SKILLS**
CODE : LSK 41A0
DATE : JUNE EXAM
DURATION : 180 minutes
TOTAL MARKS : **50**

EXAMINERS : DR JH HALL
MODERATOR : PROF DS DE VILLIERS

NUMBER OF PAGES : The question paper consists of 7 pages (including this page) and a copy of an Act and judgment.

INSTRUCTIONS

1. This paper consists of **three** questions.
2. Answer all the questions in full.
3. In Part A, choose your answer carefully as you will either get it right or wrong i.e. no marks will be given for partially correct answers.
4. You will be given **ONE** opportunity to submit.

QUESTION 1

1. The correct way to cite the Constitution is:

- a. Constitution of the Republic of South Africa, 1996*
- b. Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- c. Constitution of the Republic of South Africa Act 108 of 1996
- d. Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

[1]

2. Identify the primary sources of law in the list below. (You may choose more than one).

- a. *S v Makwanyane and Another* 1995 (6) BCLR 665 (CC)*
- b. Schwab and Davis *Shaping the Future of the Fourth Industrial Revolution* (2018)
- c. Canadian Charter of Rights and Freedoms
- d. National Environmental Management Act, 1998*

[2]

3. Write the following reference to a provision in an Act in the words by filling in the blanks: 5(6)(a)(ii).

___section___ five, ___subsection___ 6, ___paragraph___ a, ___subparagraph___ ii.

[2]

4. Section 26(1)(b) of the National Environmental Management: Waste Management Act, 2008 says that no person may dispose of (dump) waste in a way that causes pollution or harm to health and well-being. Section 67(1)(a) says that any person who contravenes section 26(1) commits an offence. Polluter (Pty) Ltd dumps very toxic waste in a river which a community uses to get their drinking water from. The environmental management inspector discusses the matter with a prosecutor. How should the inspector describe the offence? Select the correct answer.

- a. Polluter (Pty) Ltd has committed an offence in terms of section 26(1)(b) of the Act
- b. Polluter (Pty) Ltd has committed an offence in terms of section 67(1)(a) of the Act
- c. Polluter (Pty) Ltd has committed an offence in terms of section 26(1)(b) read with section 67(1)(a) of the Act*
- d. Polluter (Pty) Ltd has committed an offence in terms of either section 26(1)(b) or section 67(1)(a) of the Act

[1]

5. Look at the following list of Acts. Select the answer which describes all the Acts that require all written documents to be written in plain language.

- a. The Short-term Insurance Act, 53 of 1998*
- b. Choice on Termination of Pregnancy Act, 92 of 1996
- c. National Environmental Management: Biodiversity Act, 10 of 2004
- d. The Companies Act, 71 of 2008*
- e. The South African Consumer Protection Act 68 of 2008*

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

[2]

6. Drag and drop/ match the word in the right hand column which provides the best plain language alternative to the word.

| | |
|--------------------------------|----------|
| Commence (<i>begin</i>) | agree |
| Prohibited (<i>must not</i>) | begin |
| Consent (<i>agree</i>) | must not |
| Demonstrate (<i>show</i>) | barred |
| | initiate |
| | concur |

| | |
|--|-----------|
| | permitted |
| | show |

(a) = b; (b) = (c); (c) = a; (d) = h

[2]

7. Which of the following statements would you NOT include in an affidavit? Select all answers that are correct.

- 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]

8. The Witwatersrand Local Division of the High Court has a new name. Select the correct answer.

- a. North West High Court, Mafikeng
- b. South Gauteng High Court, Johannesburg*
- c. North Gauteng High Court, Pretoria
- d. Northern Cape High Court, Kimberly

[1]

9. In 2002, the Minister of Health lodged an appeal in the Constitutional Court against an earlier judgment ordering the government to rollout anti-retroviral treatment to HIV-positive pregnant mothers free of charge. The opposing party

was the Treatment Action Campaign accompanied by various other parties. The judgment was the first of two judgments reported in the South African Law Reports. It appeared in volume 5 of the relevant law report at page 703.

Which reported citation of the case is correct?

- a. *Treatment Action Campaign v Minister of Health and Others* 2002 (5) SA 703 (CC)
- b. *Minister of Health v Treatment Action Campaign* 2002 (5) BCLR 703 (CC)
- c. *Minister of Health v Treatment Action Campaign and Others* 2002 (5) SA 703 (CC)*
- d. *Minister of Health v Treatment Action Campaign and Others* (CCT9/02) [2002] ZACC 16 (5 July 2002)

[1]

10. What is the difference between a civil and criminal judgment? Fill in the blanks by choosing the letter of the word in the list below which provides the best match to the word.

- a. civil (c; d; e)
 - b. criminal (a; b; f)
-
- a. state and accused
 - b. public interest
 - c. award of damages
 - d. plaintiff and defendant
 - e. private interest
 - f. guilty verdict

[2]

11. 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. could be appointed to make submissions by the court
- d. represents underage litigants

e. represents bankrupt litigants

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

[2]

12. You are an attorney in practice. You are acting as an executor of the deceased estate of 'X', who leaves 50% of his estate to his wife 'W', and 25% of his estate to each of his two children 'A' and 'B'. His estate is worth R750 000 but he still owes R50 000 on his car and R180 000 on a bank loan. How much do W, A and B each get? Fill in the blanks.

W gets _____

A gets _____

B gets _____

W = R260 000; A= R130 000; B = R130 0000

[2]

[20]

QUESTION 2

Anarchists South Africa (ASA) is a new political party who won a number of votes in the elections last year. Ten of their candidates became members of Parliament. The aim of ASA is to oust the ruling party, Peace SA. During the Minister of Finance's budget speech, they were very disruptive and were escorted out of the house. As they reached the steps of Parliament, a member of Parliament from the ruling party arrived. He was late but had been watching the Minister's speech on TV. He confronted the ASA members about their behaviour. The ASA leader got very angry and started shouting and threatening violence towards the ruling party member. Three other

members of the ASA pinned him to the ground and demanded that he promise never to attend Parliament again. When he refused, one drew a knife and stabbed him in the leg.

After reading the facts above, read the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 which has been uploaded separately and answer the following questions.

2.1 What is the purpose of the Act? Indicate two places in the Act where you would look to find this information. [2]

Long title; preamble if there is one; any objects/ purpose sections

2.2 Has a crime been committed? Refer to the relevant section/s in the Act to justify your answer. [8]

Answers may vary and should not be marked incorrect as long as the student provides a feasible argument and justification.

Answers must include references to the following –

- *Relevant definitions*
- *Date when the Act commenced*
- *References to substantive provisions – particularly section 7*
- *References to the offences section i.e. link the rule to the offence*
- *An application of the facts to the rules*
- *A conclusion as to whether a crime has been committed.*

Marks will also be awarded for the demonstration of an ability to structure a coherent and logical argument and the use of paraphrasing/ summarising skills.

[10]

QUESTION 3

Discuss the *Magidiwana* judgment which has been uploaded separately with reference to the following elements:

2.1 the facts of the case;

Only relevant facts should be provided. From the editor's summary -

The main applicants were members of a class of persons who were arrested or injured after members of the South African Police Service fired shots near the Lonmin Mine at Marikana during August 2012. Other Applicants included the "Families of Deceased Persons" and the Association of Mineworkers and Construction Union. A Commission of Inquiry was established by the President to investigate and report on matters arising out of the Marikana incident. Applicants procured funding from a nongovernmental entity to cover the cost of their legal representation and other expenses incurred by them in participating in the Commission's proceedings. Such funding was provided for a period of six months. The Commission was originally intended to run for four months. It failed to complete its work during that period and its term was then extended for a further period. When the period of funding for Applicants ran out they were unsuccessful in securing other funding. Requests for further funding from Second and Third Respondents, the Minister of Justice and Constitutional Development and Legal Aid South Africa respectively, were declined. Applicants then brought an application in the High Court against the President (First Respondent) and the Second and Third Respondents seeking an interim order requiring Respondents to provide or ensure legal aid at State expense to Applicants for purposes of the proceedings before the Commission, pending a full review of the State's obligations to provide legal aid. The High Court dealt only with the application for interim relief. The High Court dismissed the application for interim relief.

2.2 the key legal question that the court was asked to answer;

Can the court hear appeals against interim orders? Would the court be interfering with the powers of government thereby violating the separation of powers.

2.3 the court's *ratio decidendi*;

The court's reliance on existing precedent should be identified. From the judgment –

The Constitutional Court had pointed out in National Treasury and others v Opposition to Urban Tolling Alliance and others 2012 (11) BCLR 1148 (2012 (6) SA 223) (CC) that while in general courts were reluctant to hear appeals against interim orders that had no final effect and which were in any event susceptible to reconsideration when the final relief was determined, this was not an inflexible rule. In each case, what best served the interests of justice dictated whether an appeal against an interim order should be entertained. Leave to appeal against interim orders could be granted. The operative standard was "the interests of justice". Whether an interim order had a final effect or disposed of a substantial portion of the relief sought in a pending review was merely one consideration. It was not the decisive consideration. Courts had also to be alive to and carefully consider whether an interim order would unduly trespass upon the sole terrain of

other branches of government even before the final determination of the review grounds. Courts had to be astute not to stop dead the exercise of executive or legislative power before the exercise had been successfully and finally impugned on review. This approach accorded well with the comity the Courts owed to other branches of government, provided they acted lawfully. A further consideration was whether in deciding an appeal against an interim order, the appellate court would in effect usurp the role of the reviewing court. Ordinarily, the appellate court should avoid anticipating the outcome of the review, except perhaps where the review had no prospects of success whatsoever. The High Court in dismissing the application had correctly followed and applied these principles.

2.4 the court's obiter dictum;

The student must demonstrate that they know what an obiter dictum is and identify 'an' obiter dictum. These may vary but will be accepted if justifiable. The key obiter dictum from the judgment is –

The Constitutional Court observed that it may well be that it would be commendable and fairer to Applicants that they be afforded legal representation at State expense for the purposes of the proceedings before the Commission. However, this did not mean that courts had the power to order the executive branch of government on how to deploy State resources.

2.5 whether the judgment sets precedent.

The student must engage with whether the doctrine of precedent would be triggered. In this instance the court followed precedent rather than creating new precedent. They must engage with the rules regarding which courts create precedent and the binding nature of those precedents.

NOTE: Marks will also be awarded for the demonstration of an ability to structure a coherent and logical argument and the use of plain language and paraphrasing/summarising skills which were taught.

[20]

TOTAL: 50 MARKS