



PROGRAM : NATIONAL DEGREE: LLB; BCOM (Law); BA (Law)
SUBJECT : **LEGAL SKILLS**
CODE : LSK 41A0
DATE : WINTER EXAMINATION
1 JUNE 2016
DURATION : 16h30 – 19h30
TOTAL MARKS : 100

EXAMINERS : MRS ES FOURIE AND MR G FRANTZ

NUMBER OF PAGES : The question paper consists of 7 pages including the cover page. Attached to the question paper is an extract of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, the *Deyssel v Carsten* case and a template for the affidavit. Total pages: 32 pages.

INSTRUCTIONS

1. Answer all the questions.
2. Write legibly.
3. Number your answers carefully.
4. Question 5 requires the use of a calculator. No cellphones, tablets or laptops are allowed.
5. Write in paragraphs where required.

1.7.3 Ms Kardashian makes a *prima facie* case of discrimination against Mr Dissick (family member) in terms of Act 4 of 2000. Explain the burden of proof that now rests on Mr Dissick in terms of this Act. (4)

1.7.4 The presiding officer decides to refer the matter to the equality court. List three orders that this court can make. (3)

1.8 Assume that the relevant government department prohibits homosexuals from adopting children. The National Coalition for Gay and Lesbian Equality asks you for advice as they are convinced that the government policy is unconstitutional and amounts to unfair discrimination in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act.

1.8.1 Explain the meaning of discrimination in terms of the Act to the National Coalition for Gay and Lesbian Equality. (3)

1.8.2 In any determination of the fairness or unfairness of discrimination certain factors must be considered. Name any three factors referred to in section 14(3) of this Act. (3)

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QUESTION 2

The respondent and his wife lived at No 8 Cyprus Street, Grahamstown. There was at the time a front garden, separated from the pavement by a low wall in which there was a pedestrian gate as well as a motor gate. The height of the wall and gates would not prevent a dog getting into the street from the front garden. Furthermore, the motor gate was always left open. Access to the back garden of the house could only be obtained by means of a gate in the fence between the house and the garage, which was situated on the southern boundary of respondent's property.

This is referred to as the side gate. On the northern side of the house access was closed off by a fence in which there had been a gate but which was wired up. It is not in dispute that a dog in respondent's back garden could only gain access to the street through the side gate next to the garage, or through the house.

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- 2.4.1 Identify the party/ies in this case. (1)
- 2.4.2 What type of case is this – a criminal or civil case? (1)
- 2.4.3 Define the following terms:
- 2.4.3.1 *ratio decidendi*;
 - 2.4.3.2 minority judgment; and
 - 2.4.3.3 *obiter dictum*. (3x1=3)
- 2.5 When did the court in the above matter deliver judgment? (1)
- 2.6 In which volume of the law reports was the case reported? (1)
- 2.7 In which court was the matter heard? (1)
- 2.8 Which advocate acts on behalf of Carsten? (1)
- 2.9 Define the following words that appear in the court case:
- (a) *cur adv vult*;
 - (b) headnote;
 - (c) *postea*; and
 - (d) concurred. (4x2=8)
- 2.10 Why are the parties called 'appellant' and 'respondent' and not 'plaintiff' and 'defendant'? (2)
- 2.11 When would the parties be called 'applicant' and 'respondent'? (1)
- 2.12 Summarise the *ratio decidendi* of *Deyssel v Carsten* in one sentence. (3)
- 2.13 The court refers to various sources on page 296 of the judgment (page 6 of the case handout). Cite one primary and one secondary source using the TSAR style guide format. Use of italics must be indicated by underlining the relevant section. In your answer you must indicate the primary and secondary source. (6)

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At the time of Yvonne's death, Xolisa has a net estate of R700 000 which consists of the following items: a rare wine collection worth R20 000 that he received as a donation from Yvonne, R50 000 he received for damages to his car (patrimonial loss) and R30 000 he received from a successful libel action against the local newspaper (non-patrimonial loss). The rate of inflation according to the weighted average of the Consumer Price Index is 1:2.

Calculate the possible accrual claim that arises from these facts.

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TOTAL 100 MARKS