



PROGRAMME : LLB
MODULE : CONSTITUTIONAL LAW
CODE : CLW41A01
DATE : 22 JUNE 2020
WINTER ONLINE EXAMINATION
DURATION : 180 MINUTES
TOTAL MARKS : 60 (50% of semester mark)

EXAMINER : Dr R Laubscher
MODERATOR : Dr E Fourie
NUMBER OF PAGES : 4 Pages

INSTRUCTIONS:

1. Please answer all questions.
2. Answers may be typed and saved in a Word document/PDF or handwritten and photographed. Photographed papers must be clear and legible.
3. All questions must be clearly numbered, but may be done in any order.
4. All answer scripts must be electronically uploaded under the Turn-it-In link on Blackboard. If this is not possible for whatever reason, the student must electronically submit the script to the lecturer via email or Whatsapp within the allocated three hour exam period (or as soon as possible thereafter). For this purpose, the lecturer's email address and Whatsapp number are as follows: rventer@uj.ac.za and 0731602903. The lecturer will be available on email, phone and Whatsapp for the duration of the exam.
5. Regarding essay questions, the use of footnotes are not required.
6. Students may use all study materials in their possession when answering the exam paper, including consulting case law online.
7. Students may under no circumstances contact any other person for assistance in answering the exam paper. Turn-it-In will pick up on copied answers. Any academic transgressions will be followed by disciplinary action by the University.

QUESTION 1:

1.1) Explain, by means of an example, how the relationship between individuals and the state are regulated in the absence of a written constitution or a bill of rights. (2)

1.2) Explain, with reference to case law, why public opinion, as a source of interpretation, would not be conclusive when interpreting the South African Constitution. (3)

1.3) Although most powers of the South African President, which were previously seen as common law powers (prerogatives), have now been included in section 84 of the Constitution, one common law power still remains. Indicate and explain what this remaining common law power is. (2)

1.4) Nadia Vavenka was born in South Africa after the commencement of the South African Citizenship Amendment Act 7 of 2010. At the time of her birth neither of her parents were South African citizens, her mother was a French citizen and her father was a Russian citizen. Nadia's birth was registered in terms of Russian law. Is Nadia a South African by birth, decent or naturalisation, or a Russian or French citizen? Motivate your answer. (3)

1.5) Sipho Maseko was born in Kenya. At the time of his birth his mother was a South African citizen, while the citizenship of his father is unknown since he was born as a result of artificial insemination from an anonymous donor. Would Sipho have South African citizenship by birth, decent or naturalisation, or Kenyan citizenship or will he be regarded as stateless? Motivate your answer. (3)

1.6) How does the 1996 Constitution describe the South African territory and how does this differ from the way it was described in the Interim Constitution? (2)

[15]**QUESTION 2:**

2.1) Explain the procedure of the adoption of a section 76 bill from initiation of the bill until it gets the president's assent. (8)

2.2) What is the difference between the dispute resolution procedure when parliament considers section 76 bills and when it considers section 75 bills? (2)

[10]

QUESTION 3:

The Organisation for Equal Language Rights (OELR) have brought an application in the Constitutional Court for an order stating that the University of Limpopo, which has adopted a single medium language policy, is contravening the language policy of the Department of Higher Education which advocates a multi-lingual approach. **You are a judge of the Constitutional Court and you are responsible for writing the majority judgment.** Write a judgment where you address the following aspects: (Please note: half marks will apply)

- The use of official languages by the South African national, provincial and local government in terms of the Constitution; (2)
- how this position (in terms of the Constitution) has been changed by more recent legislation; (2)
- all relevant case law (and academic criticism on the case law). (6)
- your final ruling (order of the court). (1)

[11]**QUESTION 4:**

Critically discuss the Constitutional Court judgment in *Mazibuko v Sisulu* 2013 6 SA 249 (CC). (This means that you have to discuss the court's judgment as well as assessing the correctness of the court's findings by referring to relevant academic criticism – you need not discuss the facts or the minority judgment.) In your answer you must refer to the following aspects (half marks will apply):

- The four main issues or legal questions that arose in this case;
- the majority judgment on each of these four issues; and
- relevant criticism of the court's findings with regard to each of these issues. **[10]**

QUESTION 5:

The Constitutional Court has exclusive jurisdiction in six specific matters. **Three** of these six matters are examples of **prior abstract control** and **one** of these matters is an example of **ex post facto abstract control** by the Constitutional Court regarding the legislation of Parliament or the provincial legislatures. Indicate the **three** matters that are examples of **prior abstract control** and the **one** matter that is an example of **ex post facto abstract control** by drawing and completing the following table:

.../4

Examples of prior abstract control:	Example of <i>ex post facto</i> abstract control:
1. [Fill in example here]	1. [Fill in example here]
2. [Fill in example here]	
3. [Fill in example here]	

[4]

QUESTION 6:

The Mpumalanga province has had some administrative difficulties in providing welfare services to poor families who have applied for welfare grants in the province. Assume that both the national legislature and the Mpumalanga provincial legislature have adopted legislation on welfare services and that these statutes contain conflicting provisions. (**Welfare services is a concurrent matter within the legislative authority of the provinces and the national legislature.**) Assume that a class action has been brought against the Mpumalanga province on behalf of the community members who have applied to receive welfare grants and that the community is arguing that these grants will be better administrated by the national government. **Assume that the matter has reached the Constitutional Court and that you are the judge responsible for delivering the court's majority judgment.** Write a judgment addressing the following aspects in detail:

- what concurrent legislative matters are;
- under which circumstances would national legislation enjoy pre-eminence over provincial legislation;
- what would happen to either the national or provincial legislation if the other legislation has prevailed;
- a past judgment of the Constitutional Court with similar facts (name the case and briefly indicate what was decided) and whether the case that you referred to should be followed; and
- your final ruling.

[10]

TOTAL: 60