



PROGRAMME : LLB
MODULE : CONSTITUTIONAL LAW
CODE : CLW41A0
DATE : 15 JULY 2020
DEFERRED 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 whether the German doctrine of the “Rechtsstaat” is still used in Germany, and if so, how it would be applied. (2)

1.2) Explain why it is necessary to give a constitution a higher status than normal legislation. (2)

1.3) Explain why conventions do not play such an important role in South African constitutional law. Can this change? Motivate your answer. (3)

1.4) Clara Bosch was born in South Africa before the commencement of the Citizenship Amendment Act 7 of 2010. She was a citizen by birth. Years later, she moved to the USA and successfully applied for US citizenship, subsequently renouncing her South African citizenship. Two years ago, she moved back to South Africa. Could she resume her South African citizenship? Motivate your answer. If she cannot resume her citizenship, what should she do to receive South African citizenship? (3)

1.5) Thando Mbali was left at an orphanage in South Africa in 2018. It is not clear where she was born or who her parents are. She was left with a scrap of paper stating her name. Her citizenship is therefore unknown and she has no birth certificate. What would her citizenship be in terms of South African law? Would she be stateless, or a South African citizen by birth, descent or naturalization? 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? Do you think that this is an adequate way of describing South Africa's territory?

(2)

[15]

QUESTION 2:

2.1) Explain the procedure for the adoption of a money 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 money bills?

(2)

[10]

QUESTION 3:

On 30 June 2020 the Supreme Court of Appeal handed down a judgment confirming that Unisa's decision to discontinue offering tuition in Afrikaans was unlawful and infringed the principle of legality (see *AfriForum NPC v Chairperson of the Council of the University of South Africa and Others* (765/2018) [2020] ZASCA 79 (30 June 2020)). Suppose that Unisa now appeals to the Constitutional Court against this judgment.

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 South African provisions on motions of no confidence and impeachments in the South African President and members of the national executive. In your answer you must also refer to relevant Constitutional Court judgments on motions of no confidence and impeachments in South Africa. (Please note: half marks will apply). **[6]**

QUESTION 5:

A court is considering the validity of a certain law. The law, however, regulates the awarding of social grants to poor families. If the law is declared invalid, the administrators will not be able to award grants in accordance with the legislation and the families will not receive their grants. Answer the following questions:

a) In which **two** ways can the court **avoid** the negative effect of declaring the law invalid? (2)

b) **Briefly discuss four** ways in which the court can **limit** the negative effect of declaring the law invalid. (8)

[10]

.../4

QUESTION 6:

The Free State province has adopted legislation for the regulating of libraries and museums in the province. Assume that both the national legislature and the Free State provincial legislature have adopted legislation on libraries and museums and that these statutes contain conflicting provisions. (**Libraries and museums are exclusive matters within the exclusive legislative authority of the provinces.**) Assume that an action has been brought against the national government by the province for infringing the province's legislative authority. **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: (please note: half marks will apply)

- What exclusive legislative matters are;
- under which circumstances national legislation will enjoy pre-eminence over provincial legislation, if at all, when exclusive matters are involved;
- how is this different from the situation where national and provincial governments have concurrent legislative authority;
- 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.

[8]**TOTAL: 60**