



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW

AUCKLANDPARK CAMPUS

SUBMISSION OF FINAL EXAMINATION PAPERS

YEAR: November 2016

COURSE AND EXAMINATION PAPER: Constitutional Law (1)

Lecturer: Dr. R Venter

EXAMINATION PERIOD:

1. How many of the following items will be required **per student?**

Examination script – 4 pages	–	<u>2</u>
Scanner sheet	–	<u>—</u>
Other	–	<u>—</u>

2. Do you grant permission that copies of this examination paper may be given to the library for inclusion in the examination books that will be made available for reference purposes to lecturers and students at a later stage?

YES / NO – Yes

3. How many students are still attending lectures (with a view to the number of examination papers required)? – 90

SIGNATURE OF LECTURER:

DATE:

FOR OFFICE USE:

Noted: _____

Date: _____

R Venter

DSDÉ 01/11/2016

2016-11-03

SUBJECT : **CONSTITUTIONAL LAW**

CODE : **SRG0000**

DATE : 29 NOVEMBER 2016

DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : DR R VENTER

MODERATOR : PROF IM RAUTENBACH

NUMBER OF PAGES : 5 PAGES

INSTRUCTIONS:

PLEASE HAND IN THE QUESTION PAPER AFTER THE EXAM.
ANSWER BOTH SECTION A AND SECTION B.
READ THE QUESTIONS CAREFULLY.
ONLY ANSWER WHAT IS ASKED.
WRITE NEATLY. GOOD LUCK!

SECTION A: CONSTITUTIONAL LAW**QUESTION 1:**

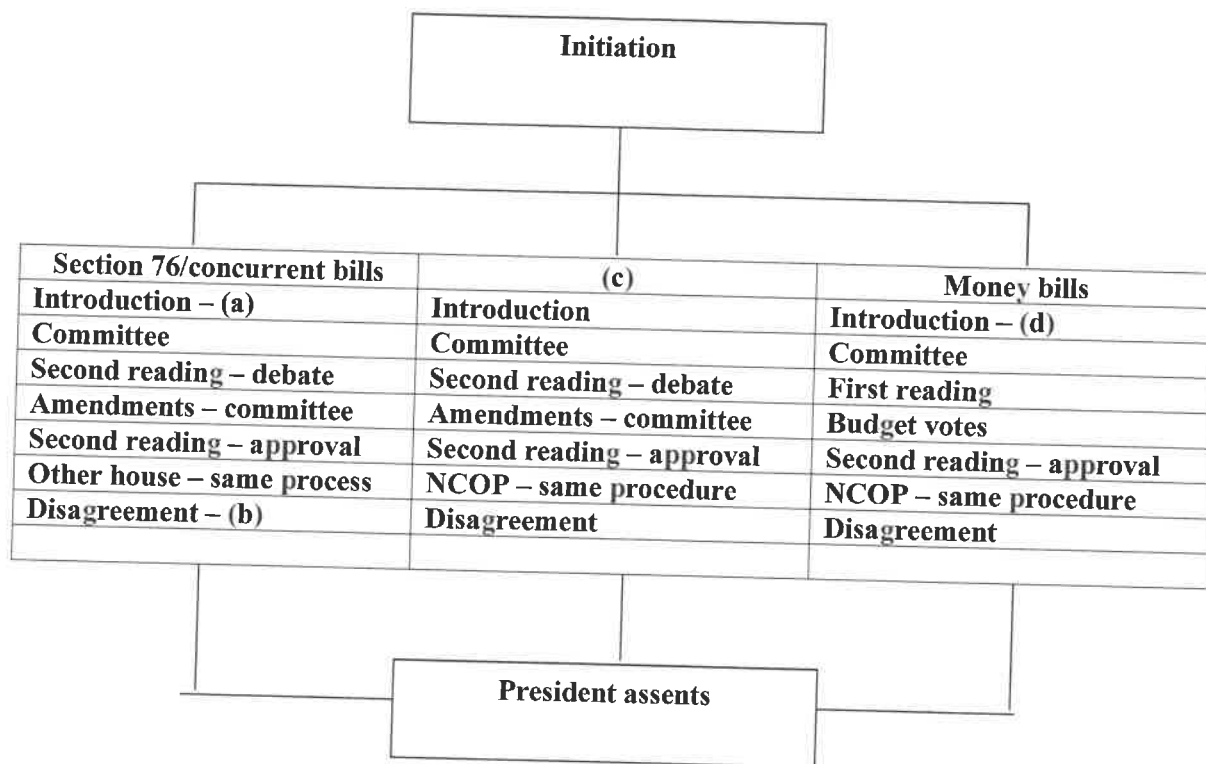
Indicate whether the following statements are **true or false** and motivate your answer. Please note that your answer needs to be motivated even when the statement is true. Half marks will apply.

- 1.1) The phrase “the state prosecutes someone for murder” refers to the government authority characteristic of the state. (1)
- 1.2) The phrase “constitution in a wide sense” refers to a written document or law, while a “constitution in a narrow sense” refers to all the constitutional provisions in a state collectively. (1)
- 1.3) When interpreting the South African Constitution, international law may be considered and foreign law must be considered. (1)
- 1.4) When two persons, one with South African citizenship and one with German citizenship, get married on a ship which is registered in Australia but physically present in the territorial waters of Mauritius at the time of the marriage, both persons will become citizens of Australia in terms of South African law. (1)
- 1.5) If a person is born in South Africa and his one parent was a representative of the French government in South Africa, while the other parent was a citizen of Spain at the time of his birth, that person will be a South African citizen by birth. (1)
- 1.6) The South African provision on territory in the Constitution is very detailed. (1)
- 1.7) In the British system the legislative authority is vested in the Congress and the House of Lords, the executive authority in the monarch and the cabinet, and the judicial authority is vested in the courts. (1)
- 1.8) In a union all government bodies are subject to the authority of the national government bodies, which means that there can be no provinces or local governments. (1)
- 1.9) The preamble of the Constitution should only be used to interpret the Constitution when there are provisions which are vague or ambiguous. (1)
- 1.10) The new law which regulates the use of official languages by the South African government is called the South African Languages Act 12 of 2012, and provides that the national and provincial government should use at least three official languages, two of which should be indigenous languages. (1)

[10]

QUESTION 2:

Use the diagram about the legislative process to answer the questions below:



- (a) In which house(s) of parliament are section 76 bills introduced? (1)
 (b) What happens when there is a disagreement between the houses of parliament about section 76 bills? (2)
 (c) What is the name of this type of bill that may be considered by parliament? (1)
 (d) In which house(s) of parliament are money bills introduced? (1)

[5]

QUESTION 3:

What are the main differences between a motion of no confidence adopted in the President and the removal of the President for serious non-political reasons?

[6]

QUESTION 4:

Explain what **personal independence** and **functional independence** of judicial organs entail and give two examples of measures used to implement and strengthen each of these types of independence respectively.

[8]

QUESTION 5:

5.1) The Constitution determines that both the provinces and the national legislature may adopt legislation on concurrent matters, for instance welfare services and health services. Sometimes the national and provincial legislation may however contain conflicting provisions. Answer the following questions:

- a) Which provision in the Constitution provides a procedure that should be followed when national and provincial legislation contains conflicting provisions? (1)
 b) Explain the procedure for dealing with conflicting provisions in concurrent legislation and list two requirements of this procedure. (3)

.../4

c) Which case would be relevant to a dispute between the national and provincial legislature about conflicting provisions in concurrent legislation? Briefly discuss the court's decision in this case. (2)

5.2) The Constitution makes provision for the adoption of provincial constitutions by the legislatures of the South African provinces. Write an essay on provincial constitutions in South Africa. Include in your essay the requirements for the adoption of provincial constitutions, whether any South African provinces have tried to adopt provincial constitutions and any relevant case law on provincial constitutions. (10)

[16]

SECTION A: 45 MARKS

SECTION B: BILL OF RIGHTS

QUESTION 1:

The #feesmustfall protest has led many South African universities to resort to violence against students. The students allege that they are entitled to free higher education. The universities have tried to prevent the students from assembling, associating and exercising their right to freedom of expression outside these universities. This is because not all students have acted peacefully and some damage to university property has occurred, as well as intimidation of other students and staff members. Universities and police have however reacted by retaliating against all students gathered outside the universities, whether peaceful or not, with teargas, rubber bullets and water cannons. The students and student organisations of various universities have instituted a class action against the various public universities in South Africa alleging that they have infringed their rights to human dignity, freedom and security of the person, freedom to assemble, freedom of association, freedom of expression and the right to education. The universities allege that there is no right to free higher education guaranteed by the Constitution, that the students have not acted within the ambit of the definition of the rights to expression and assembly and that the universities are therefore justified in infringing their rights in order to protect university property and other students and staff members. Assume that the case has reached the Constitutional Court. Answer the following questions:

1.1) a) Which **steps** should the court follow when the Bill of Rights is applied to these facts? Indicate your answer in table form and apply the steps to these facts. **For purposes of this question you only have to discuss the right to freedom of assembly in section 17 of the Constitution that provides that everyone has the right to assemble peacefully and unarmed.** (8)

b) In terms of section 36(1) any limitation of rights must be "reasonable and justifiable in an open and democratic society based on human dignity, freedom and equality". Indicate how the court should apply the five factors of the limitation clause in section 36 to these facts, in order to determine whether the limitation is reasonable and justifiable. (PLEASE NOTE: **You must name and explain the factors and physically apply them to these facts.**) (10)

.../5

- 1.2) a) Which provision in the Constitution protects human dignity? (1)
b) How is the right to human dignity affected in this set of facts? (1)
c) Why is human dignity so important in the South African context? What does the right entail? (2)
d) Is it true that the right to human dignity is inviolable, or in other words not possible to limit? Motivate your answer. (1)

- 1.3) a) Which provision in the Constitution protects freedom and security of the person? (1)
b) What interests are protected by the right to freedom and security of the person? Name the five interests protected in terms of the Constitution. (5)
c) How is the right to freedom and security of the person affected in this set of facts? (1)
d) The right to freedom and security of the person also protects other aspects of a person's right to bodily and psychological integrity. Name these three aspects protected in terms of the Constitution. (3)

- 1.4) a) Which provision in the Constitution protects freedom of expression? (1)
b) How is the right to freedom of expression affected in this set of facts? (1)
c) If the students were to propagate slogans such as "Free education or die!" and "Whites should die" or sing the struggle song "Kill the Boer" would they still enjoy protection in terms of this right? Motivate your answer and refer to relevant case law. (5)

- 1.5) a) Which provision in the Constitution protects freedom of association? (1)
b) What are the conduct and interests protected by freedom of association? (2)
c) How is the right affected in this set of facts? (1)
d) Are juristic persons bearers of the right to freedom of association? Motivate your answer. (1)

- 1.6) a) Which provision in the Constitution protects the right to education? (1)
b) Is there a "right to free higher education" in the Constitution as claimed by the students? Are the students' right to education therefore violated? (2)
c) What are the state's duties with regard to providing higher/further education? What did the Constitutional Court decide in *Government of RSA v Grootboom* with regard to guidelines for providing access to adequate housing, and may this reasoning also apply to providing access to higher education? (7)

[55]

SECTION B: 55 MARKS

TOTAL: 100