



PROGRAMME : LLB
MODULE : CONSTITUTIONAL LAW
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WINTER EXAMINATION
DURATION : 120 MINUTES
TOTAL MARKS : 60 (50% of semester mark)

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MODERATOR : Dr E Fourie
NUMBER OF PAGES : 8 Pages

INSTRUCTIONS:

1. YOU MAY KEEP THE QUESTION PAPER AFTER THE EXAM.
2. READ THE QUESTIONS CAREFULLY.
3. ONLY ANSWER WHAT IS ASKED.
4. WRITE NEATLY. GOOD LUCK!

QUESTION 1:

Answer the following multiple choice questions by indicating the letter of the correct statement (**A, B, C or D**) in your answer book.

1.1) To which **characteristics or elements of states** do the following statements refer: "South Africa is part of the United Nations Organisation" and "States can be unilingual or multilingual"?

- A) Juristic personality and legal system.
- B) Independence and people.
- C) Juristic personality and territory.
- D) Government authority and people. (1)

1.2) Which of the following statements are correct with regard to constitutional law doctrines that regulate the relationship between the state and the individual?

- 1) One aspect of the British rule of law doctrine is that everybody is subject to the courts.
- 2) In Germany the "rechtsstaat" doctrine entails everything that is good in statecraft and public law.
- 3) Legal systems that use doctrines to regulate the relationship between the state and the individual are less fair than systems that have written constitutions.
- 4) In South Africa *ubuntu* can be seen as a type of constitutional doctrine that developed among indigenous peoples of the country and is still relevant today.
- 5) In the American legal system individuals' rights are protected by the ordinary courts and not a constitution.
- 6) In Britain individuals' rights are protected by a written constitution.
- 7) In South Africa *ubuntu* is not a value that underlies our constitutional order as was explained in *S v Mhlungu*.

- A) Statements 2, 4, 5 and 6 are correct.
- B) Statements 1, 3, 6 and 7 are correct.
- C) Statements 2, 3, 5 and 7 are correct.
- D) Statements 1, 2, and 4 are correct. (1)

1.3) Which one of the following statements is correct with regard to international and foreign law as sources of interpretation when interpreting the Constitution?

- A) International law must be considered and foreign law may be considered when interpreting the Constitution.
 - B) International law may be considered and foreign law must be considered when interpreting the Constitution.
 - C) International law must always be followed by a court.
 - D) Foreign law will be conclusive when it is relevant to a certain case and there is no local case law on the subject under a court's consideration.
- (1)

1.4) In which of the following circumstances will a South African citizen **automatically** lose his/her citizenship?

- 1) Marriage to a foreigner.
 - 2) Service in the armed forces of a foreign state that is at war with South Africa and the person has the citizenship of that other state.
 - 3) When a person is an SA citizen by naturalisation, but the naturalisation certificate was granted in conflict with the act.
 - 4) When a person acquires the citizenship of another state by a voluntary and formal action while the person is outside the Republic.
 - 5) When a person has made use of the passport of another country.
- A) Statements 2 and 4 are correct.
 - B) Statements 2, 3, 4 and 5 are correct.
 - C) Statement 4 is correct.
 - D) All the statements are correct.
- (1)

1.5) In which of the following instances may the **minister deprive** a South African citizen of his/ her citizenship?

- 1) It is in the public interest that the person is deprived of his/ her citizenship.
 - 2) The person has served in the armed forces of another state that is at war with South Africa.
 - 3) The person has renounced his/ her South African citizenship and has the citizenship of another state.
 - 4) When a person acquires the citizenship of another state by a voluntary and formal action while the person is outside the Republic.
 - 5) The person has been sentenced to 12 months imprisonment in another state for an offence that would also be a crime in South Africa.
- A) All the statements are correct.
 - B) Statements 1 and 5 are correct.
 - C) Statements 1, 2, and 4 are correct.
 - D) Statements 2, 3 and 5 are correct.
- (1)

1.6) With regard to the expansion or reduction of the territory of a state, certain international law terms could be applicable. Indicate which of these terms are described correctly:

- 1) Occupation: the acquisition of territory that forms part of another state through the uninterrupted occupation thereof.
- 2) Annexation: the acquisition of territory that does not form part of any other state.
- 3) Alluviation: the transfer of territory by one state to another state.
- 4) Cession: transfer of territory by one state to another in terms of international adjudication.

- A) All the statements are correct.
- B) All the statements are incorrect.
- C) Statement 1 is correct.
- D) Statements 1 and 4 are correct.

(1)

1.7) Which of the following statements are correct with regard to the proportional representation electoral system?

- 1) This system does not provide representation to the voters whose candidates have not been elected.
- 2) This electoral system brings about a direct relationship between the percentage of votes cast in favour of a particular party and the percentage of seats it obtains in parliament.
- 3) In this system there is no link between the percentage of seats and the percentage of votes obtained in an election.
- 4) This system has various variations including the list system and the preferential system.
- 5) A disadvantage of this system is that it brings about separation between the voters and their representatives.
- 6) An advantage of this system is that it brings the representatives closer to the voters.
- 7) A disadvantage of this system is that it may cause a proliferation of small parties and splinter groups.
- 8) The disadvantages of this system may be overcome by setting a threshold requirement for a minimum percentage to obtain seats in parliament.

- A) Statements 1, 3 and 6 are correct.
- B) Statements 2, 4, 5, 7 and 8 are correct.
- C) Statements 2, 7 and 8 are correct.
- D) Statements 1, 3, 6 and 7 are correct.

(1)

1.8) Which of the following statements indicate the **horizontal separation of powers in the United States of America** correctly?

- A) Legislative authority is vested in Parliament, executive authority is vested in the Senate and the President and judicial authority is vested in the courts.
- B) Legislative authority is vested in Congress, executive authority is vested in President and cabinet and the judicial authority is vested in the courts.
- C) Legislative authority is vested in Congress, executive authority is vested in the President and the House of Representatives and the judicial authority is vested in the courts.
- D) Legislative authority is vested in Senate, the executive authority is vested in the Congress, the cabinet and the President and the judicial authority is vested in the courts. (1)

1.9) Which of the following statements are correct with regard to the South African right to vote?

- 1) In *Minister of Home Affairs v NICRO* the court stated that all voters need to have a bar-coded identity document in order to register to vote.
 - 2) In *NNP v Government of South Africa* the court stated that imprisonment does not justify prisoner's exclusion from voting.
 - 3) In *Minister of Home Affairs v NICRO* the court stated that imprisonment does not justify prisoner's exclusion from voting.
 - 4) In *NNP v Government of South Africa* the court stated that all voters need to have a bar-coded identity document in order to register to vote.
 - 5) Other requirements of the right to vote are that a person must be 18 years or older, may be of unsound mind or insolvent.
 - 6) Other requirements of the right to vote are that a person must be 18 years or older, may not be of unsound mind or insolvent and must be a citizen.
- A) Statements 1, 2 and 6 are correct.
 - B) Statements 3, 4 and 6 are correct.
 - C) Statements 1, 2 and 5 are correct.
 - D) Statements 3, 4 and 5 are correct. (1)

1.10) Which of the following statements relating to the functioning of parliament are indicated correctly?

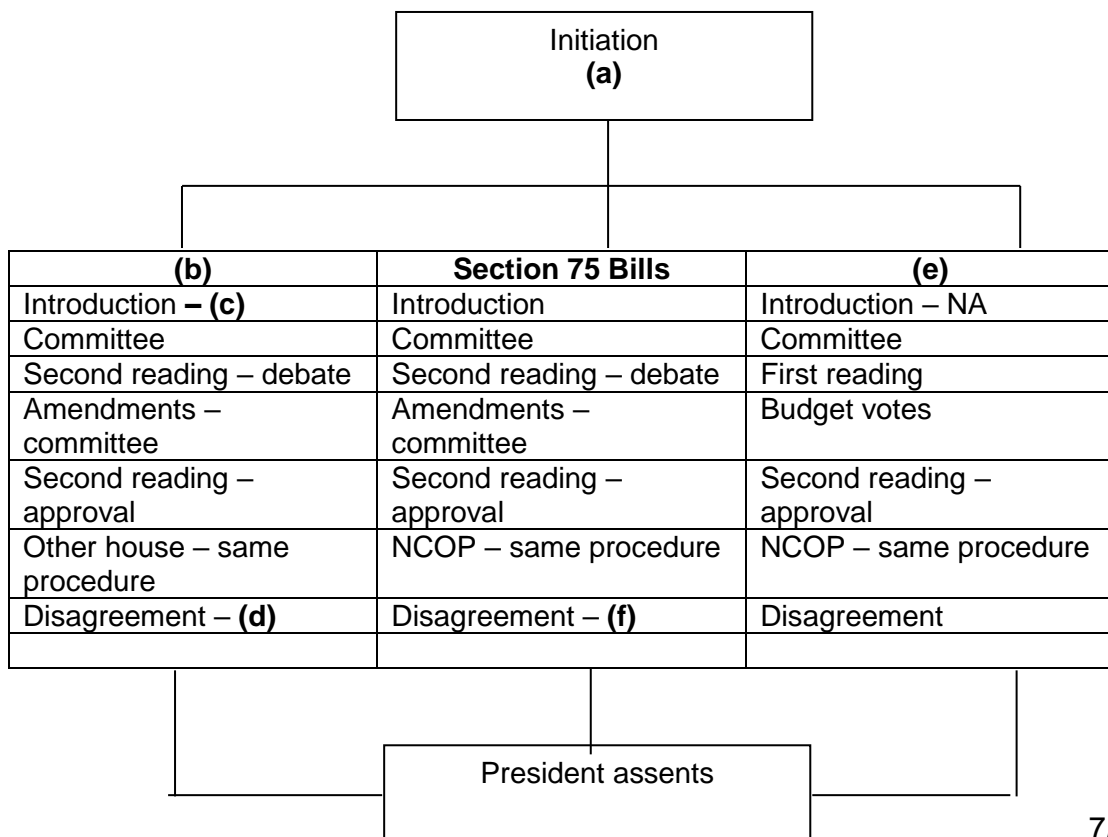
- 1) Session: a daily sitting of parliament when the members are assembled.
- 2) Sittings: the periods during the year when the parliament is summoned for the dispatch of business.
- 3) Sittings: a daily sitting of parliament when the members are assembled.
- 4) Privileges of parliament refer to the benefits that parliament members receive, like housing, travel allowances and transportation.
- 5) Privileges of parliament refer to the privileges enjoyed by members of parliament in order to perform their functions unhindered.
- 6) A continuous session entails that the parliament may still adjourn from time to time.
- 7) A continuous session entails that the parliament must always be in sitting and cannot adjourn.

- A) Statements 1, 2, 4 and 7 are correct.
- B) Statements 1, 3, 5 and 6 are correct.
- C) Statements 3, 5 and 6 are correct.
- D) Statements 3, 4 and 7 are correct.

(1)
[10]

QUESTION 2:

Use the following diagram about the South African legislative process to answer the questions below:



...7/

- a) By whom are bills usually initiated? (1)
 b) What is the name of this type of bill that may be adopted by parliament? (1)
 c) In which house(s) of parliament is the type of bill that you referred to in (b), introduced? (1)
 d) What happens when there is a disagreement between the houses of parliament about the bills that you referred to in (b)? (2)
 e) What is the name of this type of bill that may be adopted by parliament? (1)
 f) What happens when there is a disagreement between the houses of parliament about a section 75 bill? (1)
[7]

QUESTION 3:

The Organisation for Equal Language Rights (OELR) have brought an application in the Constitutional Court for an order stating that the government's non-translation of legislation into all official languages amounts to unfair language discrimination. **You are responsible for representing the OELR.** Indicate the argument that you will use to convince the court of the merit of your client's case. In your argument you need to address the following aspects: (Please note: half marks will apply)

- The number of official languages that have to be used by the South African national, provincial and local government in terms of the Constitution; (2)
 - how this position has been changed by more recent legislation; (2)
 - all relevant case law (and academic criticism on the case law); and (5)
 - the relief sought from the court. (1)
- [10]**

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. **[10]**

QUESTION 5:

A court is considering the validity of a certain law. The law, however, regulates 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? (1/2+1/2)

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

[9]

QUESTION 6:

The Free State province has adopted legislation 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: (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.

[10]

QUESTION 7:

Name and briefly discuss four examples that illustrate that other spheres of government still have wide powers with regard to local government matters in South Africa. [4]

TOTAL: 60