



**PROGRAMME** : LLB  
**MODULE** : CONSTITUTIONAL LAW  
**CODE** : CLW41A01/SRG0000  
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**DURATION** : 120 MINUTES  
**TOTAL MARKS** : 60 (50% of semester mark)

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**NUMBER OF PAGES** : 9 Pages

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**INSTRUCTIONS:**

1. PLEASE HAND IN 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 a friendly state" and "There are common-law and *ius civile* states"?

- A) Juristic personality and legal system.
- B) People and legal system.
- C) Government authority and independence.
- D) People and government authority. (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 rule of law doctrine is that nobody is above the law.
- 2) In Germany the "Rechtsstaat" doctrine was replaced by a written Constitution.
- 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 the American legal system a constitutional doctrine was replaced by a written Constitution.
- 5) In the American legal system no constitutional doctrines developed, since their written Constitution was adopted very early in the state's constitutional history.
- 6) In South Africa *ubuntu* can be seen as a type of constitutional doctrine that developed among indigenous peoples and is still relevant today.
- 7) In South Africa *ubuntu* is not really a relevant constitutional doctrine since we have a written Constitution.

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

1.3) Which one of the following statements are correct with regard to public opinion as a source of interpretation when interpreting the Constitution?

- A) Public opinion must always be considered, because it is important for the court to take note of the views of the public to give legitimacy to its decisions.
- B) Public opinion may be considered, and may even be conclusive, if there is clear evidence as to the public's opinion on a certain issue through verifiable statistics, surveys etc.
- C) Public opinion may be considered, but will not be conclusive, since this will detract from the supremacy of the Constitution.
- D) Public opinion may be considered, but will not be conclusive, since this will detract from the supremacy of parliament. (1)

1.4) Robert Wright was born in South Africa. However, at the time of his birth his father was the British ambassador (with British citizenship) in South Africa and his mother was an American citizen. Which of the following statements indicate Robert's citizenship correctly?

- 1) Robert is a South African citizen by birth since he was born in South Africa.
  - 2) Robert is a British citizen.
  - 3) Robert could qualify for British or American citizenship depending on the citizenship rules of those states.
  - 4) Robert will not be a South African citizen, because this is one of the exceptions to the rule that people who are born in South African territory usually become citizens by birth.
  - 5) If Robert's mother had South African citizenship at the time of his birth, Robert would have been a South African citizen by birth.
  - 6) Robert is a South African citizen by naturalisation.
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- A) Statements 1, 3 and 5 are correct.
  - B) Statements 2, 4 and 6 are correct.
  - C) Statements 3 and 5 are correct.
  - D) Statements 3 and 4 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) Which of the following international law terms, with regard to the expansion or reduction of territory, are described correctly?

- 1) Annexation: the expansion of territory through natural accretion.
- 2) Cession: the transfer of a part of its territory by one state to another state in terms of international adjudication.
- 3) Adjudication: the transfer of territory by one state to another state.
- 4) Alluviation: the addition by force of territory which forms part of another state.

- A) All the statements are incorrect.
- B) All the statements are correct.
- C) Statements 2 and 3 are correct.
- D) Statements 1 and 4 are correct. (1)

1.7) Which of the following statements are correct with regard to unions and federations?

- 1) In a union there is a real distribution of authority between the national government and the provinces.
- 2) In a federation there is a real distribution of authority between the national government and the provinces.
- 3) In a union all government bodies are subject to the authority exercised by the national government.
- 4) In a union there are no provincial and local government bodies, since the national government exercises all authority.
- 5) Federations only come into being when a number of independent states agree to form a new state.
- 6) Unions do not have written constitutions.
- 7) In federations a constitution usually regulates and entrenches the distribution of authority in a state.

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

(1)

1.8) Which of the following statements are correct with regard to the constituency 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) This system has various variations including the list system and the preferential system.
- 4) An advantage of this system is that it brings the representatives closer to the voters.
- 5) A disadvantage of this system is that it may cause a proliferation of small parties and splinter groups.

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

(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?

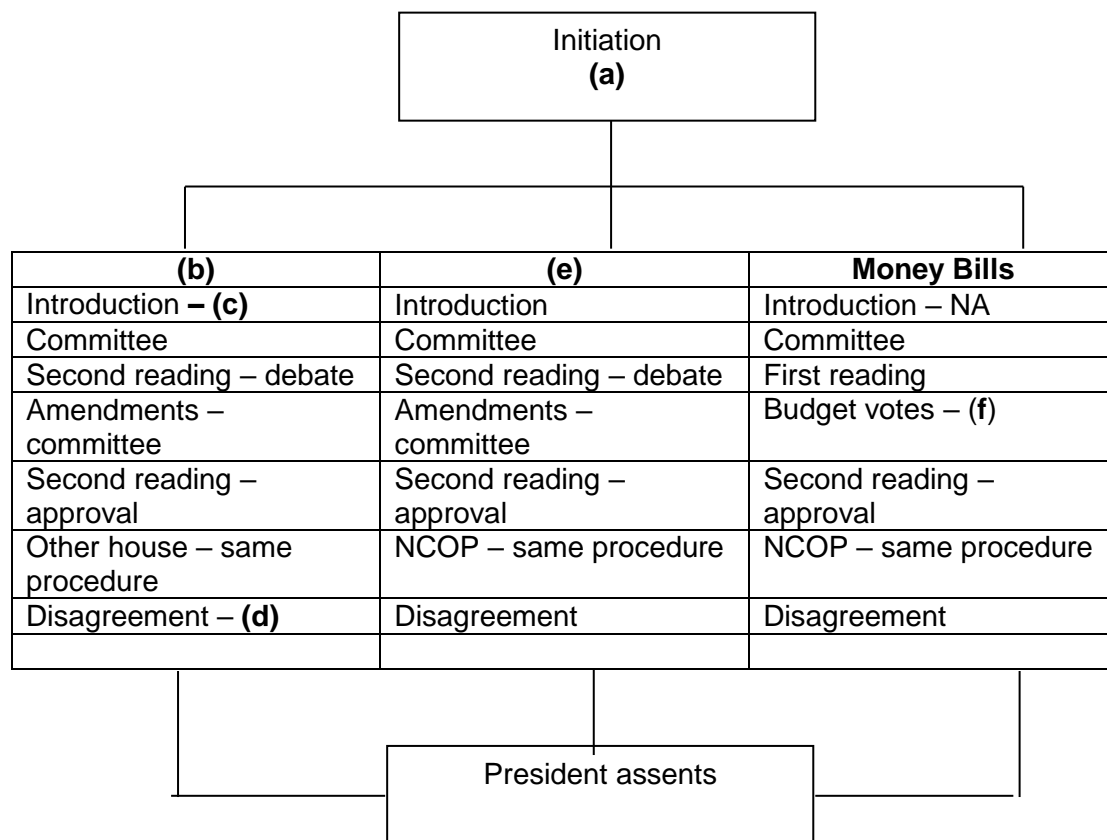
- 1) Session: a daily sitting of parliament when the members are assembled.
- 2) Sittings: the periods during the year when the parliament is summoned for the dispatch of business.
- 3) Sittings: a daily sitting of parliament when the members are assembled.
- 4) Privileges of parliament refer to the 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:



- 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 are budget votes? (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 University of Limpopo, which has adopted a single medium language policy, is contravening the new language policy of the Department of Higher Education which advocates a multi-lingual approach. **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)

...8/

- 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 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:

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

**[4]**



**QUESTION 6:**

6.1) 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 for 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 will 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)

6.2) Name **five** requirements for a valid provincial constitution. (5)

[15]

**QUESTION 7:**

**Briefly discuss the four ways** in which the Constitution has **improved the status of the local government.** [4]

**TOTAL: 60**