



SUBJECT : **CONSTITUTIONAL LAW (SSA PAPER)**
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TOTAL MARKS : 100

EXAMINER : DR R VENTER
MODERATOR : MR MJ VAN STADEN
NUMBER OF PAGES :

INSTRUCTIONS:

1. PLEASE HAND IN THE QUESTION PAPER AFTER THE EXAM.
 2. ANSWER BOTH SECTION A AND SECTION B.
 3. READ THE QUESTIONS CAREFULLY.
 4. ONLY ANSWER WHAT IS ASKED.
 5. WRITE NEATLY. GOOD LUCK!
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SECTION A: CONSTITUTIONAL LAW**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 elements or characteristics of the state does the following statement refer? "South Africa is a member of the United Nations and can be seen as a diverse and multicultural state."

- A) Government authority and a legal system
- B) Independence and territory
- C) Juristic personality and people
- D) Independence 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 individuals?

- 1) Doctrines that regulate the relationship between the state and individuals usually develop in countries that do not have formal written constitutions.
- 2) Doctrines that regulate the relationship between the state and individuals can develop in countries with existing written constitutions.
- 3) Examples of such doctrines are the rule of law doctrine, the *Rechtsstaat*, *ubuntu* and the separation of powers doctrine.
- 4) Examples of such doctrines are the rule of law doctrine, the *Rechtsstaat* and *ubuntu*.
- 5) In the United States of America no doctrines have developed.
- 6) In the United States of America a strict separation of powers doctrine is followed to regulate the relationship between the state and individuals.
- 7) In Germany the *Rechtsstaat* doctrine plays no significant role since the adoption of the German Constitution.
- 8) In Germany the *Rechtsstaat* doctrine is applied together with the German Constitution and can also be used to supplement its provisions.

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

(1)

1.3) Which of the following options are sources of Constitutional law:

- 1) Legislation
- 2) Values that underlie an open and democratic society
- 3) Common law
- 4) Customary law
- 5) Case law
- 6) Constitutional principles

- A) Statements 1, 3, 4 and 5 are correct.
- B) Statements 2 and 6 are correct.
- C) All the statements are correct.
- D) All the statements are incorrect.

(1)

...3/

1.4) 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)

1.5) Which of the following statements are correct with regard to prerogatives and conventions?

- 1) Conventions were developed to restrict the prerogatives of the monarch.
 - 2) Prerogatives were developed to restrict the conventions of the monarch.
 - 3) The effect of a convention is that the prerogative may only be exercised in a particular way.
 - 4) The effect of a convention is that the prerogative cannot be exercised by the monarch, but should be exercised by the cabinet.
 - 5) Notwithstanding the existence of a convention, the monarch still retains reserve powers in terms of which the prerogative may still be exercised at the monarch's discretion in emergencies.
 - 6) When a convention applies to a specific prerogative, the monarch has no reserve powers as this would allow the monarch to act ultra vires.
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- A) Statements 2, 4 and 6 are correct.
 - B) Statements 1, 4 and 5 are correct.
 - C) Statements 1, 3 and 6 are correct.
 - D) Statements 1, 3 and 5 are correct.
- (1)

1.6) In which of the following circumstances may a South African citizen automatically lose his/her citizenship?

- 1) When a person has renounced his South African citizenship in a formal declaration and has the citizenship of another state.
- 2) When a person has been sentenced in a foreign country to at least 12 months imprisonment for an offence which is also an offence in South Africa.
- 3) When a person is a South African citizen by naturalisation, and the naturalisation certificate was granted in conflict with the act or any prior law.
- 4) Service in the armed forces of a foreign state that is at war with South Africa and the person is a citizen of that other state.
- 5) Service in the armed forces of a foreign state that is at war with South Africa and the person is not a citizen of that other state.
- 6) The person has made use of the passport of another country.
- 7) The person has acquired the citizenship of another state by a voluntary and formal action while the person was outside the Republic.
- 8) When it is not in the public interest that a person remains a South African citizen.

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

1.7) Angelina Jolie was born in the USA. At the time of her birth her father (a French citizen) was working as a representative of the French government in the USA. At the time of her birth her mother was a South African citizen. Which combination of the following statements correctly indicates Angelina's citizenship?

- 1) Angelina is an American citizen by birth.
- 2) Angelina is a South African citizen by birth.
- 3) Angelina is a French citizen by birth.
- 4) Angelina is a South African citizen by descent.
- 5) Angelina could have American or French citizenship depending on the citizenship rules of those states.
- 6) If Angelina's father was a South African citizen working for the South African government at the time of Angelina's birth she would have been a South African citizen by birth.

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

1.8) Which of the following international law terms, with regard to the expansion or reduction of territory, are described correctly?

- 1) Occupation: acquisition through lengthy and uninterrupted occupation of an area that forms part of another state.
- 2) Cession: the transfer of a part of its territory by one state to another state in terms of international adjudication.
- 3) Prescription: acquisition of an area which does not form part of any other 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 4 are correct.
- D) Statements 1 and 3 are correct. (1)

1.9) Which of these statements indicate the **vertical distribution of government authority in South Africa** correctly?

- A) Legislative authority is vested in Parliament, executive authority is vested in the President and judicial authority is vested in the courts.
 - B) Powers are distributed between national, regional or provincial and local levels of government.
 - C) Legislative authority is vested in Parliament, executive authority is vested in the monarch and cabinet and judicial authority is vested in the courts.
 - D) Powers are only distributed between national and provincial levels of government.
- (1)

1.10) Which of the following statements are correct with regard to the reasons why it is proper and useful to regard the state as a juristic person in South African law?

- 1) The state is comprised of **people**.
 - 2) The state has formal characteristics like **official symbols** to identify the state.
 - 3) The state has a defined **territory**.
 - 4) The state has **government organs** to act on its behalf.
 - 5) The state cannot **institute or defend legal proceedings**.
 - 6) The state has a unique **legal system**.
 - 7) The state is **subject to the law**.
 - 8) An example of an act that refers to the state as a juristic person is The State Accountability Act of 1957.
 - 9) An example of an act that refers to the state as a juristic person is the State Liability Act of 1957.
- A) Statements 1, 3, 4, 5, 6 and 8 are correct.
 - B) Statements 1, 2, 4, 5, 7 and 9 are correct.
 - C) Statements 2, 5, 7 and 9 are correct.
 - D) Statements 1, 2, 3, 4, 5, 6, 7 and 8 are correct.
- (1)

[10]

QUESTION 2:

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.

- 2.1) The concept of the “rule of law” has never really been defined and codified in British constitutional law. (1)
- 2.2) In Germany the doctrine of the “Rechtsstaat” is not used any longer, since they have a Constitution with a bill of rights. (1)
- 2.3) The Constitution could **never** be applied to a case pending before the court at the time the Constitution took effect, and these cases had to be disposed of as if the Constitution never took effect. (1)
- 2.4) Interpretation in conformity with the Constitution means that the Constitution must conform to all the constitutional principles. (1)
- 2.5) If a person loses their South African citizenship by birth, and want to return to South Africa and resume their citizenship, this could be achieved by revival of citizenship. (1)

.../6

2.6) There are no exceptions to the rule that states do not have extraterritorial jurisdiction to exercise government authority outside its own borders. (1)

2.7) In the United States of America the legislative authority is vested in the Senate, the executive authority in the House of Representatives and the President and the judicial authority in the courts. (1)

2.8) The Pan South African Language Board has **only** been created to develop and promote **official languages**. (1)

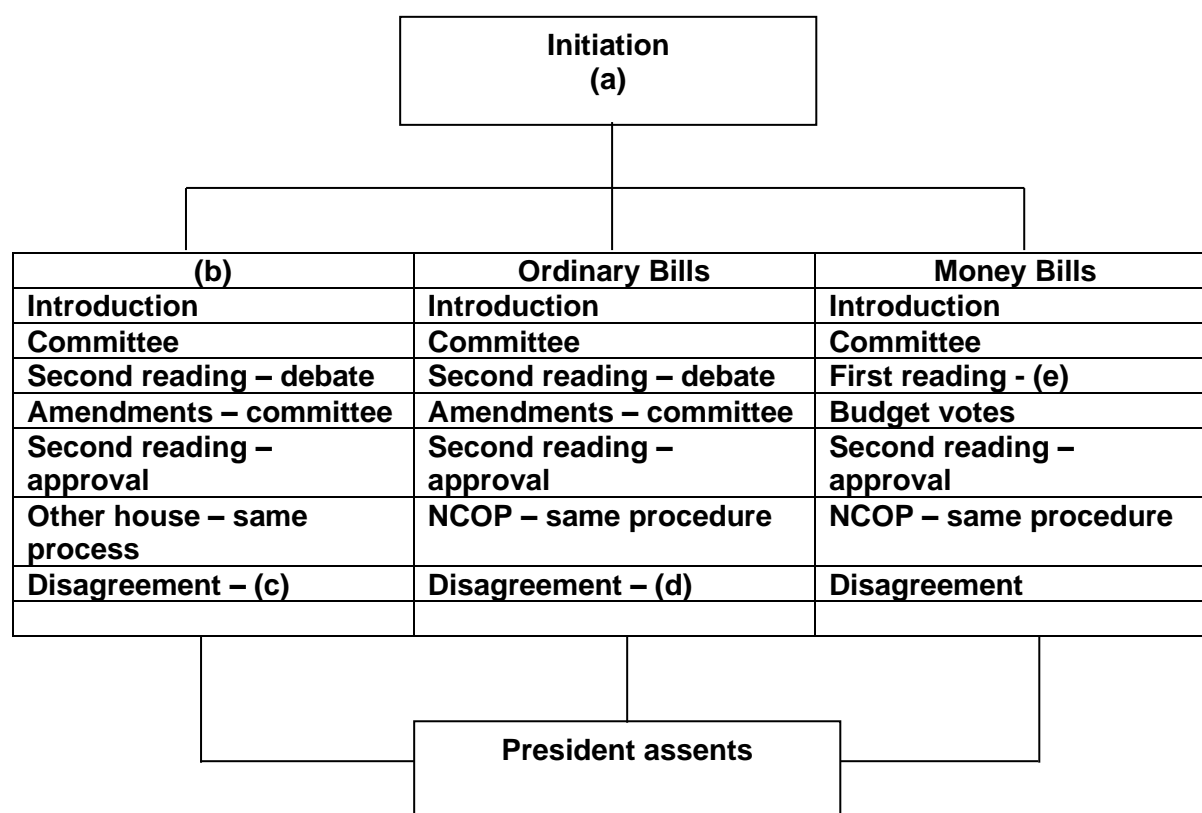
2.9) The preamble of a constitution is not more important than the preambles of other legislation. (1)

2.10) The South African President can veto laws that have been approved by Parliament. (1)

[10]

QUESTION 3:

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



(a) Who initiates legislation? (1)

(b) What is the name of this type of bill that may be considered by parliament? (1)

(c) What happens when there is a disagreement between the houses of parliament about the type of bill that you named in (b)? (2)

(d) What happens when there is a disagreement between the houses of parliament on ordinary bills? (1)

(e) What is the most important money bill of the financial year? (1)

[6]

QUESTION 4:

Broadly speaking, electoral systems may be divided into two categories. Compare these two categories of electoral systems in table form by: naming the systems, giving a brief description of each system, naming one advantage and one disadvantage of each system and by indicating the way in which the specific disadvantage of each system may be overcome. Draw the following table in your answer book to help you.

Name of Electoral system:		
Brief description of the system:		
Advantage of the system:		
Disadvantage of the system:		
How the disadvantage may be overcome:		

[10]

QUESTION 5:

The Constitutional Court has exclusive jurisdiction on six specific matters. Answer the following questions:

- Name these six matters of exclusive jurisdiction. (6)
- Three** of the six matters that you mentioned in (a) 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 **two** matters that are examples of **prior abstract control** and **one** matter that is an example of **ex post facto abstract control** by drawing and completing the following table:

Examples of prior abstract control:	Example of ex post facto abstract control:
1. [Fill in example here]	1. [Fill in example here]
2. [Fill in example here]	

(3)

[10]

QUESTION 6:

The Constitution gives expression to the idea of co-operative government in different ways. Write an essay on the **five** ways in which the Constitution gives effect to the principle of co-operative government. [10]

TOTAL SECTION A: [56]

SECTION B: THE 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. 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.**) (10)

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- 1.2) 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)
- 1.3) 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)
- 1.4) 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* 2001 1 SA 46 (CC) and *Melani v Johannesburg City and Others* 2016 5 SA 67 (GP) with regard to guidelines for providing access to adequate housing, and may this reasoning also apply to providing access to higher education? (11)

TOTAL SECTION B: [44]

TOTAL SECTION A + SECTION B: [100]
