



**SUBJECT** : **CONSTITUTIONAL LAW**  
**CODE** : **SRG0000**  
**DATE** : 21 NOVEMBER 2017  
**DURATION** : 3 HOURS  
**TOTAL MARKS** : 100

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**MODERATOR** : MR MJ VAN STADEN  
**NUMBER OF PAGES** : 9 PAGES

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**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? "The state raises taxes and can buy a piece of land."

- A) Legal system and government authority.
- B) People and juristic personality.
- C) Legal system and independence.
- D) Government authority and juristic personality. (1)

1.2) Which of the following statements correctly indicate some of the values referred to in section 1 of the Constitution?

- 1) Accountability, responsiveness and openness
- 2) Supremacy of Parliament and the rule of law
- 3) Supremacy of the constitution and the rule of law
- 4) Freedom and security of the person
- 5) Advancement of human rights and fundamental freedoms
- 6) Regular elections
- 7) Freedom of the media
- 8) Non-racialism and non-sexism

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

1.3) In states without constitutions other doctrines have been developed to regulate the relationship between the state and the individual. Examples of these doctrines are:

- 1) Prerogatives
- 2) Ubuntu
- 3) Conventions
- 4) Rule of law
- 5) "Rechtsstaat"

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

1.4) Which of the following statements are instruments or sources of interpretation that **may be used when interpreting the Constitution**, but that **will not be conclusive**?

- 1) Case law
- 2) International law
- 3) Foreign law
- 4) Public opinion
- 5) Values that underlie an open and democratic society
- 6) The whole text of the Constitution

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

(1)

1.5) Which of the following statements are features of the Westminster system that still applies in South Africa?

- 1) Constitutional democracy
- 2) Parliamentary sovereignty
- 3) Ceremonial head of state
- 4) Combined office of head of state and head of government
- 5) The executive needs the support of Parliament to remain in power
- 6) The executive does not need the support of Parliament to remain in power
- 7) Absolute separation of powers
- 8) Conventions play a significant role

- A) All the statements are incorrect.
- B) Statement 1, 4 and 5 are correct.
- C) Statement 5 is correct.
- D) Statements 2, 3, 6, 7 and 8 are correct.

(1)

1.6) In which of the following circumstances may a South African citizen **be deprived of their citizenship by the minister**?

- 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 is a South African citizen by naturalisation, and the naturalisation certificate was granted in conflict with the act or any prior law.
- 3) 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.
- 4) The person has made use of the passport of another country.
- 5) The person has acquired the citizenship of another state by a voluntary and formal action while the person was outside the Republic.
- 6) When it is not in the public interest that a person remains a South African citizen.

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

(1)

...4/

1.7) Nicholas Louw was born in South Africa. At the time of this birth his father was working for the British government in South Africa, and his mother was a Namibian citizen. Which of the following statements are correct with regard to Nicholas' citizenship?

- 1) Nicholas is a SA citizen by birth, because he was born in SA.
- 2) Nicholas is a British citizen, because children follow the citizenship of their father in SA law.
- 3) If Nicholas' mother was a SA citizen, Nicholas would have been a SA citizen by descent.
- 4) Nicholas could have British or Namibian citizenship depending on the citizenship rules of those states.
- 5) Nicholas will be given Namibian citizenship in order to avoid statelessness.

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

(1)

1.8) Which of the following statements are correct with regard to the territory of South Africa?

- 1) The South African territory is described in section 103(1) & (2) of the Constitution.
- 2) The South African territory is described in section 74(1) & (2) of the Constitution.
- 3) Amendments to the South African boundaries (national or provincial) must be approved by a 2/3 majority in the National Council of Provinces and a 75% majority in the National Assembly.
- 4) Amendments to the South African boundaries (national or provincial) must be approved by a 75% majority in the National Assembly and 6/9 provinces in the National Council of Provinces.
- 5) Amendments to the South African boundaries (national or provincial) must be approved by a 2/3 majority in the National Assembly and 6/9 provinces in the National Council of Provinces.
- 6) Amendments to the South African boundaries also have to be approved by the affected provincial legislatures and local governments.
- 7) Amendments to the South African boundaries also have to be approved by the affected provincial legislatures.
- 8) In the case of amendments to the South African boundaries, provision must be made for public participation.
- 9) Public participation in the process of the amendment of the boundaries is not necessary since the public is already sufficiently represented in the national and provincial legislatures.

- A) Statements 1, 3, 6 and 9 are correct.
- B) Statements 2, 4, 6 and 9 are correct.
- C) Statements 2, 5, 7 and 8 are correct.
- D) Statements 1, 5, 7 and 8 are correct.

(1)

1.9) Which of these statements indicate the **horizontal separation of powers in the USA** correctly?

- A) Federal legislative authority is vested in Parliament, executive authority is vested in the monarch and cabinet and judicial authority is vested in the courts.
- B) Powers are distributed between national, regional and local levels of government.
- C) Federal legislative authority is vested in the congress, executive authority is vested in the House of Representatives and judicial authority is vested in the courts.
- D) Federal legislative authority is vested in the congress, executive authority is vested in the President and cabinet and judicial authority is vested in the courts.

(1)

1.10) Which of the following statements are correct with regard to the role of preambles in interpreting constitutions and ordinary legislation?

- 1) Preambles of ordinary legislation should only be used in interpreting provisions where those provisions are vague or ambiguous.
- 2) Preambles of ordinary legislation should always be used in interpretation, even when provisions are not vague.
- 3) Preambles of constitutions should only be used in interpreting provisions when a provision is vague or ambiguous.
- 4) Preambles of constitutions must always be used when interpreting any provision of the constitution.
- 5) The relevant case that described the role of constitutional preambles is *Law Union and Rock Insurance Co Ltd v Carmichael's Executor*.
- 6) The relevant case that described the role of constitutional preambles is *S v Mhlungu*.
- 7) The relevant case that described the role of preambles of ordinary legislation is *S v Mhlungu*.
- 8) The relevant case that described the role of preambles of ordinary legislation is *Law Union and Rock Insurance Co Ltd v Carmichael's Executor*.

- A) Statements 1, 3, 5 and 7 are correct.
- B) Statements 1, 4, 6 and 8 are correct.
- C) Statements 2, 3, 5 and 7 are correct.
- D) Statements 2, 4, 6 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) Written Constitutions with a bills of rights is the only way to regulate the relationship between the state and the individual. (1)
- 2.2) *Ubuntu* is an indigenous law concept that is not relevant in South Africa's modern democracy. (1)
- 2.3) The Constitution is not applicable to administrative actions that took place before the commencement of the Constitution. (1)

...6/

2.4) SA citizenship can automatically be acquired by marrying a SA citizen, as long as the spouse intends to permanently reside in the Republic. (1)

2.5) A state's territory may be increased by means of cession, which entails the transfer of territory by one state to another in terms of international adjudication. (1)

2.6) The separation of powers in Britain is described as "relative" because there is relatively little overlap between the legislative, executive and judicial authority. (1)

2.7) 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)

2.8) In *S v Mhlungu* the court stated that the preamble of the Constitution should only be used when a provision is vague or ambiguous. (1)

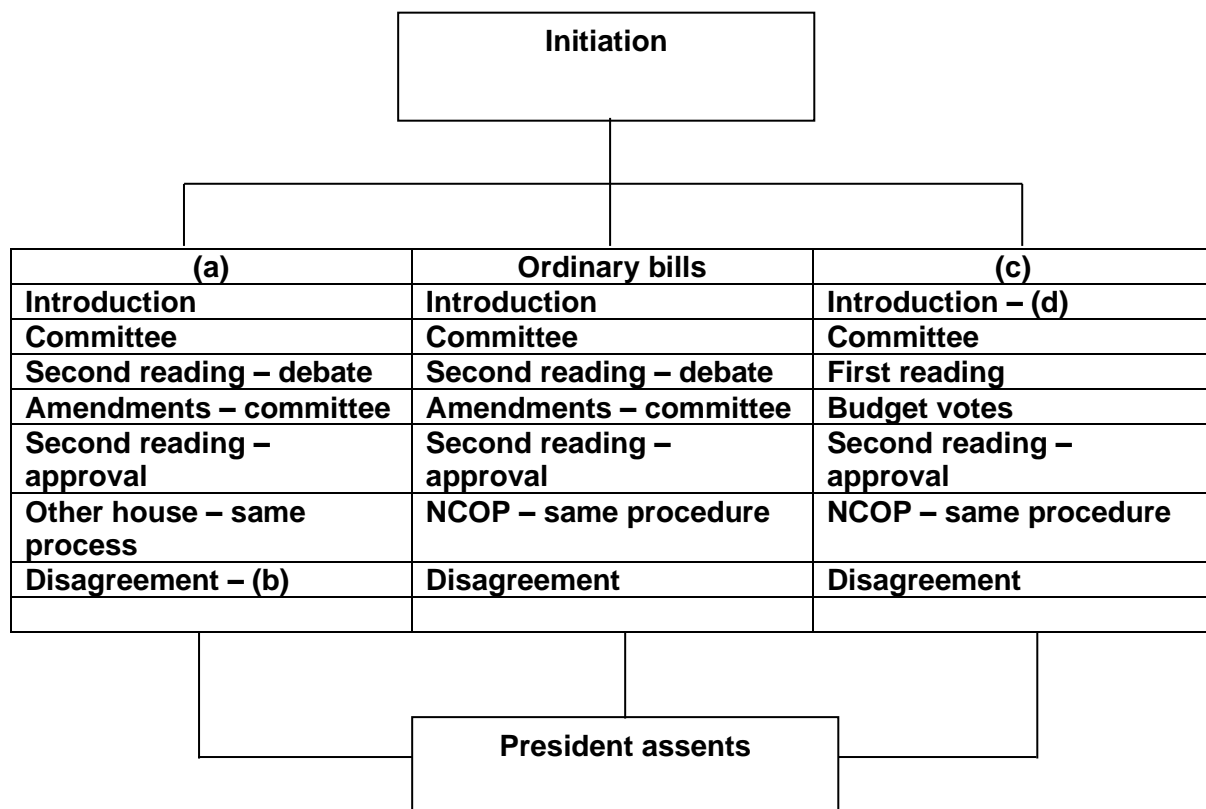
2.9) Every state has its own legal system but usually it does not have any subsystems within this legal system. (1)

2.10) The 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 3:**

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



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

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

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

(d) Whom must introduce the types of bills that you mentioned in (c)? (1)  
[5]

**QUESTION 4:**

Explain the majorities needed in parliament and rules regarding the amendment of the various different provisions in the South African Constitution. [10]

**QUESTION 5:**

The proposed Protection of Information Bill provides that the state could classify certain information as secret and if such information were published it could result in the arrest and imprisonment of the journalists who published it. Assume that the bill has been adopted by both houses of parliament and has been signed by the President. The DA and some of the other parties in the National Assembly, however, feel that the act is unconstitutional. You are an expert on constitutional law and the DA has approached you for legal advice. Answer the following questions:

a) Advise the DA as to any remedy(s) that it can utilise within 30 days after the President's assent. (4)

b) What type of control by the courts does the remedy that you referred to in (a) represent? (2)

c) If the DA did not use the remedy that you referred to in (a) within 30 days after the President's assent, what other remedy is at the DA's disposal? (2)

d) What type of control by the courts does the remedy that you referred to in (c) represent? (2)

[10]

**QUESTION 6:**

The North West province has had some administrative difficulties in providing houses to poor families who have applied for government subsidised housing in the province. Assume that both the national legislature and the North West provincial legislature have adopted legislation on housing and that these statutes contain conflicting provisions. (Housing 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 North West province on behalf of the community members who have applied for housing and that the community is arguing that housing in the province 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 are concurrent legislative matters?
  - Under which circumstances will national legislation enjoy pre-eminence over provincial legislation?
- ...8/

- What would happen to either the national or provincial legislation if the other legislation has prevailed?
- Which past judgment of the Constitutional Court has similar facts (name the case and briefly indicate what was decided)? Should the case that you referred to be followed in this instance?
- Your final ruling.

[10]

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**TOTAL SECTION A:****[55]**

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**SECTION B: THE BILL OF RIGHTS****QUESTION 1:**

The questions that follow are based on the following set of facts. Read the set of facts and then answer the questions that follow:

There is an informal settlement just outside Bloemfontein where the community has been living in dire conditions for more than 10 years. The community decided to expand their informal settlement to a piece of vacant land next to their existing settlement which belonged to the state. The community has no running water or electricity. The roads are not tarred and the inhabitants only live in shacks and huts that they have built themselves. Fires, rain, wind and drought also have a severe effect on the community members and their children. The local government of Bloemfontein has promised the community that their area will be developed and that they qualify for government subsidised housing, but has threatened to forcibly remove the community from the neighbouring land since they have been occupying the property illegally. In desperation the community sought legal advice and a civil rights group called "Housing for All" have agreed to help the community institute a class action against the Bloemfontein municipality for the infringement of their rights to dignity and access to adequate housing. The municipality argues that there is insufficient funds to develop the settlement and that the community will be forcibly removed from the land that they are illegally occupying. The municipality further argues that funds are needed elsewhere in the municipal budget especially with regard to health care. Suppose the case has been instituted in the High Court.

1.1) 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 of access to adequate housing in section 26 of the Constitution that provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.** (8)

1.2) Discuss the judgment in the recent case *Melani v Johannesburg City and Others* 2016 5 SA 67 (GP) and indicate if this case could help the community in their class action. Also indicate what remedy(s) would be appropriate in a case such as this.

(5)  
...9/



1.3) What did the Constitutional Court decide in *Government of RSA v Grootboom* 2001 1 SA 46 (CC) with regard to guidelines for providing access to adequate housing? (5)

1.4) 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)

**[28]**

## **QUESTION 2:**

Consider the following provision from the South African Constitution and answer the questions that follow:

“Section 16(1) Everyone has the right to freedom of expression, which includes –

- (a) freedom of the press and other media;
- (b) freedom to receive and impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to –

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

2.1) Why is freedom of expression seen as a key freedom in all democracies? (3)

2.2) Section 16 of the Constitution protects various types of specific expression, such as media freedom and artistic freedom. Which protected interest in section 16 would provide for other types of expression which are not expressly stated? Motivate your answer. (2)

2.3) Section 16(2) excludes some forms of expression from constitutional protection. Discuss this section according to the following guidelines:

(a) Is this section an example of a specific limitation clause? Motivate your answer. (2)

(b) Does “violence” in section 16(2)(b) refer only to physical violence? Motivate your answer. (2)

(c) What other legislation is instrumental in enforcing section 16(2)(c)? Explain why this piece of legislation goes further than the Constitution with regard to hate speech. (3)

(d) Briefly discuss at least two examples from case law which dealt with hate speech. (5)

**[17]**

**TOTAL SECTION B: [45]**

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**TOTAL SECTION A + SECTION B: [100]**

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