



PROGRAM : LL.B
BA (LAW)
BCOM (LAW)

MODULE : **BILL OF RIGHTS / HUMAN RIGHTS**

CODE : **HRE0021 / HRT41B0**

DATE : NOVEMBER EXAMINATION
28 NOVEMBER 2016

DURATION : 170 MINUTES + (10 MINUTES READING TIME)

TOTAL MARKS : 100

EXAMINERS : MR J LENONG
MR SC HELEBA

MODERATORS : DR M SHONGWE
DR R VENTER

NUMBER OF PAGES : 6 PAGES

INSTRUCTIONS TO CANDIDATES:

- NB: ANSWER SECTION A AND SECTION B IN DIFFERENT ASSESSMENT PAPERS (BOOKS).
 - NO STUDY MATERIALS OR ANY OTHER TEXTS ARE ALLOWED.
 - PLEASE HAND IN YOUR QUESTION PAPER BEFORE LEAVING THE ASSESSMENT VENUE.
 - READ THE QUESTIONS CAREFULLY AND PLAN YOUR ANSWERS BEFORE YOU START ANSWERING THE QUESTIONS.
 - NO ELECTRONIC DEVICES ARE ALLOWED.
 - REFER TO ANY RELEVANT AUTHORITY WHERE APPLICABLE.
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SECTION A**QUESTION 1**

Answer the following questions:

- 1.1 Name four (4) steps present under a structural interdict as a constitutional remedy. (4)
- 1.2 Provide the listed relevant factors under section 36 of the 1996 Constitution, to be considered when limiting a constitutional right? (5)
- 1.3 What are the guidelines under section 8(3) of the Constitution to assist a court when applying the Bill of Rights directly to private conduct or private violations of human rights? (5)
- 1.4 Name four constitutional remedies available to a prospective litigant when directly relying on the Constitution? (4)
- 1.5 Define the principle of avoidance as used in constitutional law. (2)
- [20]**
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QUESTION 2

"In the absence of a disqualifying legislative provision, it was not possible for respondents to seek to justify the threatened infringement of prisoners' rights in terms of section 36 of the Constitution as there was no law of general application upon which they could rely to do so."

August and Another v Electoral Commission and Others (CCT8/99) [1999] ZACC 3 [para 23]

- 2.1 Briefly present the background facts of this case. (5)
- 2.2 Discuss the criteria for justifying a limitation of a right based on a law of general application in the context of the above case. (10)
- (15)**
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QUESTION 3

On the 1st of September 2016 parliament passed the *Management of State Litigation Act* 105 of 2016, colloquially known as *MASLA*. This act was promptly signed into law the very next day by the President of the Republic. The Act serves to regulate the circumstances and conditions under which a state organ would initiate court proceedings and other related matters. On the 10th of September 2016, the Coalition to Protect State Funds commonly known as *COPSTAF*, challenged the constitutionality of *MASLA* in the North Gauteng High Court. They premised their challenge to the legislation on section 20 of *MASLA*. Section 20 stated:

- (1) *No state official can be held liable in their own capacity for any litigation where that official is added as a party to the dispute.*
- (2) *All cost orders against the State shall be for the account of Treasury; even where a state official is a private party to such judicial proceedings.*

COPSTAF concedes that the Act serves its intended purpose, but argues that section 20 of the Act violates section 216(2) of the Constitution. They argue that the Act overreaches by protection state officials in their private capacity and that section 20 limits the Treasury's powers under section 216(2) of the Constitution. Specifically Treasury's authority to stop the transfer of funds to an organ of state where it commits a serious or persistent breach of the Treasury's measures. Section 216(2) states:

- (1)
- (2) *The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.*

The court a quo declared *MASLA* unconstitutional in its entirety. Government now appeals this matter. The State concedes that the provisions under section 20 is unconstitutional, but argues that this does not warrant the declaration of the whole of the legislation as unconstitutional. The government argues that the court a quo did not consider section 172(1)(a) of the Constitution. Rely on relevant case law and discuss whether the provision could be severed from the Act in order to control or limit the impact of the declaration of invalidity.

(15)

SUBTOTAL:**[50]**

SECTION B (start in separate book)**QUESTION 1**

- 1.1. Provide two justifications or reasons for including socio-economic rights in the Constitution, 1996. (5)
- 1.2. Discuss how our courts approach complaints of the violation of the right to freedom of religion. (5)
- 1.3. State the factors a court takes into account when determining unfair discrimination, especially if the discrimination is based on analogous grounds. (5)
- 1.4. State the nature of the obligations imposed on the state by the reasonableness review standard as interpreted by the Constitutional Court in *Government of the RSA & Others v Grootboom & Others* 2000 (11) BCLR 1169 (CC). (5)
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- [20]**

QUESTION 2

Thabang holds a BSc degree in veterinary science. He has just completed his practical training and has applied to the South African Medical Association (SAMA) to be registered as a professional veterinarian. The SAMA refuses to register Thabang because he has on two occasions been convicted of cruelty to animals in terms of the relevant legislation. The two specific acts that Thabang was convicted of were the slaughter of sheep by cutting its throat with a knife while other sheep are watching and themselves waiting to be slaughtered. The relevant legislation prohibits the slaughtering of an animal while conscious and in the watch of other animals.

Thabang is furious at the SAMA's decision to refuse to register him as a veterinarian. He says he has to slaughter the animal in this way as part of his religious observance. He argues that the refusal to register him is a violation of his constitutional right to practice his religion, and that the SAMA is forcing him to choose between his religion and the professional which he "loves so much".

Thabang has heard that you are a law student and wants to know about his chances of success if he were to take the SAMA to court. Advise Thabang as follows:

- 1.1 State the most relevant court decision in which a similar issue was dealt with. (1)
- 1.2 State how the different judges approached the issue in the case mentioned in 1.1 above. (14)
- [15]

QUESTION 3

Professor Slide Billboard teaches theology at Mzansi University. Professor Billboard has been unhappy about the growing rights of homosexuals in South Africa as he believes that homosexuals are “possessed by evil spirits”. In order to make his stance on this issue known, as well as to “conscientise” the entire university community, Professor Billboard holds a public lecture at the University’s amphitheatre. In his lecture he demonstrates how homosexuality is against the values in the Bible. At the end of the lecture Professor Billboard goes around campus, with large number of his theology students, distributing pamphlets written: “Homosexuals are possessed by the devil, they must be wiped off the face of this earth”. Prof Billboard’s views and conduct reach the attention of the university’s management which institutes disciplinary hearings against Prof Billboard and ultimately dismisses him. Prof Billboard intends taking the university to court for dismissing him as he believes that the South African Constitution protects his right to freedom of expression. He approaches Sunshine Attorneys for advice. You are handling Prof Billboard’s case at Sunshine Attorneys. Advise Prof Billboard on whether his case would succeed in court. Your advice to him must include the following:

- 1.1 The type of speech or ideas that he is advocating. (1)

1.2	The elements of such expression.	(2)
1.3	Why was he dismissed for this type of expression?	(3)
1.4	How similar expressions have been dealt with by the courts and other legal bodies.	(9)
		[15]
SUBTOTAL:		[50]
TOTAL		[100]
