



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

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

**CODE** : HRT41BO/HRE0021

**DATE** : 29 OCTOBER 2020 (SUMMER EXAMINATION)

**DURATION** : 180 MINUTES (three hours)

**TOTAL MARKS** : 60

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**EXAMINERS** : DR M ROUX  
: PROF MR PHOOKO

**MODERATOR** : PROF M PIETERSE (WITS)

**NUMBER OF PAGES** : 3 PAGES

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**INSTRUCTIONS TO CANDIDATES:**

- You must download the question paper from Blackboard at 16h30 on 29 October, and must submit your answers by 19h30 on 29 October on Blackboard.
- Please indicate very clearly which questions you are answering.
- Plan your answers carefully: the mark allocation for a specific question will give you an idea as to the level of detail expected in your answer.
- The exam will be open-book: you may therefore use prescribed study material to substantiate your answers. When quoting directly from a source, place it in quotation marks.
- You may NOT get assistance from fellow students or communicate answers to one another. Please take note that the Law Faculty takes a zero-tolerance approach to plagiarism, sharing of answers, or unauthorised assistance by anyone else in writing the test. Your answer script will be tested for plagiarism in general, and in respect of the answers of other students.
- Submitting your answer script:
  - You must submit your answer script on Blackboard.
  - Please *rather* type out your answers on an electronic device, and submit the document on Blackboard. Should you not be able to type out your answers, you may *write your answers by hand*, and scan/photograph your answers
  - NB!!!! If you write out your answers by hand, PLEASE CONSOLIDATE AND SUBMIT THE SCANS/PHOTOS OF YOUR ANSWERS INTO A SINGLE DOCUMENT. Blackboard does not accept separate documents.

### **QUESTION 1**

On 7 August 2020 the Minister of Justice and Correctional Services introduced various amendments to the existing Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. The bill is entitled the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B16 – 2020].

In this Amendment Bill, it is proposed in section 7(c) that the Registrar of the National Register for Sex Offenders (NRSO) will be obliged to “make the full names, surname, identity number and the sexual offence, of every person whose particulars have been included in the Register, available on the website of the Department of Justice and Constitutional Development.” The purpose of this amendment is to protect persons vulnerable to sexual offenders, such as children and persons who are mentally disabled.

However, should the Amendment Bill be passed into law, section 7(c) is likely to face constitutional challenges on the grounds that it violates the rights to privacy, equality and dignity of the registrants. These rights can be limited in terms of section 36 of the Bill of Rights, if it is reasonable and justifiable to do so in an open and democratic society based on the values of human dignity, freedom and equality. Ultimately, the rights of the registrants need to be weighed against the public’s right to information and to freedom and security of the person in terms of the general limitations clause.

Answer the following questions relating to the above:

- 1.1 Express your opinion on whether this would be a matter of direct or indirect application of the Bill of Rights, as well as whether it would be a matter of horizontal or vertical application. You must justify your answer. (10)
- 1.2 Critically evaluate whether section 7(c) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B16 – 2020] would constitute a justifiable limitation of constitutional rights(s) in terms of section 36 of the Bill of Rights. (15)
- 1.3 Outline which constitutional remedies would be the most appropriate should this amount to a constitutional violation. (5)

**[30]**

### **QUESTION 2**

Comprehensively explain the concepts of ‘progressive realization’, ‘reasonable measures’ and ‘within available resources’ as they appear in sections 26 and 27 of the Constitution.

Your answer **should NOT** exceed one page.

**[10]**

### **QUESTION 3**

During the fees must fall protests, students recited various political slogans to pursue their cause for free tertiary education in South Africa. On one occasion, Jacob Zondi could be heard singing a remixed version of one of the notorious political songs. He chanted, “Kill the management, Kill the leaders”.

With reference to decided cases, critically discuss the right to freedom of expression in terms of section 16 of the Constitution of the Republic of South Africa, 1996. In your answer, indicate whether the aforesaid statements fall within the ambit of protected speech. Your answer **should NOT** exceed three pages. [10]

**QUESTION 4**

Daniel Tshuku, a leader of the movement called “housing for all” lobbied his constituency to occupy vacant land not far from Sandton in Johannesburg. Within a week, countless houses made out of corrugated iron were built in the area. The residents collectively decided to name their informal settlement “Freedom Park”. During one of the cold and rainy days in October 2020, the City of Johannesburg decided to demolish all the structures at Freedom Park informal settlement and evicted the residents. There was no form of notice whatsoever given to the residents.

In light of the above, what is your understanding of the concept of meaningful engagement as developed by the courts in eviction cases? Your answer **should NOT** exceed one page. [10]

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**TOTAL EXAM:** [60]

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