



**PROGRAMME** : LLB  
**MODULE** : HUMAN RIGHTS/BILL OF RIGHTS  
**CODE** : HRT41B0/HRE0021  
**DATE** : JANUARY 2020  
SPECIAL SUPPLEMENTARY EXAM  
**DURATION** : 120 MINUTES  
**TOTAL MARKS** : 80 (50% of semester mark)

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**EXAMINER** : Dr R Venter  
**MODERATOR** : Dr E Fourie  
**EXTERNAL MODERATOR** : Prof M Pieterse (University of the Witwatersrand)  
**NUMBER OF PAGES** : 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:**  
**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. (Your answers do not need to correspond with the ruling in the case mentioned below.)

In *Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* 2018 (6) SA 393 (CC), the Constitutional Court decriminalised the private use of marijuana since its prohibition infringed on the right to privacy entrenched by section 14 of the Constitution. The NPA, among other things, argued that the use of marijuana and other drugs have to be curbed by the state in order to give effect to South Africa's international obligations to combat the international drug trade. They further argued that the use of drugs should be limited by the state in order to protect the public against addiction and drug abuse. Suppose you were the Constitutional Court judge responsible for delivering the majority judgment in this case and had to decide on the constitutionality of the private use of marijuana. Answer the following questions.

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 to privacy in section 14 of the Constitution.** (8)

1.2) 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 privacy in section 14 of the Constitution.**) (10)

1.3) In terms of section 38 of the Constitution, "[a]nyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief...". As the judge in this matter, indicate what "appropriate relief" you would have granted with regard to this set of facts. (2)

1.4) Explain what the following remedies entail and in what circumstances the remedies would be seen as "appropriate relief":

- a) Structural interdict (2)
- b) Constitutional damages (2)
- c) Meaningful engagement (2)

**TOTAL SECTION A:** [26]

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