



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

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MODERATOR : Dr E Fourie
EXTERNAL MODERATOR : Prof M Pieterse (University of the Witwatersrand)
NUMBER OF PAGES : 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!

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 *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others* (CCT320/17) [2019] ZACC 34 (18 September 2019), the Constitutional Court invalidated parents' defence of moderate and reasonable chastisement with regard to a charge of assault against a child in the course of disciplining a child. The Court invalidated this defence because the violence perpetrated against a child was argued to be a serious infringement of a child's rights to human dignity and freedom and security of the person entrenched by sections 10 and 12 of the Constitution respectively. Freedom of Religion South Africa, however, argued that disciplining children according to the tenets of religion and cultural practices forms part of parents' rights to religion and culture. Suppose you were the Constitutional Court judge responsible for delivering the majority judgment in this case and had to decide on the constitutionality of corporal punishment regarding children by their parents. 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 freedom and security of the person in section 12 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 freedom and security of the person in section 12 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) Are there any tools of interpretation that a court could use to avoid declaring a legal rule invalid? (2)

TOTAL SECTION A:

[22]