



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Public Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: SSL0021/SSL41B0 SOCIAL SECURITY LAW
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: November 2018 (main)

<b><u>DATE</u></b>	:21 November 2018	<b><u>SESSION</u></b>	: 08:30-10:30
<b><u>ASSESSOR(S)</u></b>	: Dr S Ncube		
<b><u>MODERATOR</u></b>	: Prof MM Botha(UP)		
<b><u>DURATION</u></b>	: 2 HOURS	<b><u>MARKS</u></b>	: 60

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## **EXAM MEMO**

### **QUESTION ONE**

- The constitution is the supreme law of the land and any law inconsistent with its provisions is invalid.S2
- The state has a responsibility to Promote the spirit and purpose of the constitution
- Ubuntu – has been elevated to a constitutional value, encompasses human dignity and equality

- *S v Makwanyane*
- Death penalty and the constitution –post 1994 South Africa
- There is a common South African citizenship. S3(1) and all citizens are equally entitled to the rights, privileges and benefits
- Ubuntu means Equality – cornerstone of the new democratic dispensation.
- Ubuntu means Human dignity –foundation of the provision of social security by the state.
- Ubuntu means Progressive realisation –state has a responsibility and this responsibility can be evaluated.
- State must take reasonable legislative matters to achieve the rights provided for by the constitution
- Khosa –constitution demands equality and it is a demonstration of Ubuntu to incorporate permanent residents into the social security system of the nation.
- Soobramoney –balance between what the state has and what is being demanded of it, rights are not absolute, internal and external limitations
- S36 limitations in terms of what can be demanded from government
- Grootboom –rights are interrelated and connected
- When interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom

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## **QUESTION Two**

- The issue of definitions is pivotal to any discourse on social security for people with disabilities.
- Why define? Because you cannot address something that you don't understand.
- There is no universal definition of the concept of people living with disabilities.
- Generally, there are two models of defining disability, namely;
  1. the medical model; and
  2. the social model.

- Medical model –a person with a disability is one who suffers from some or other impairment.
- This impairment is therefore the obstacle in that prevents the individual from doing various things, amongst them obtaining and retaining a job, accessing buildings, etc.
- Social model –a person with a disability is one with an impairment. However, the inadequacy of the environment to accommodate the individual is identified as the problem and not the impairment.
- Proceeds from a premise that society has a responsibility to remove barriers and to involve people living with disabilities.
- The disability definitions that underpin current social security provisioning are for various reasons problematic. They are;
  1. based entirely on the medical model;
  2. Are constructed in such a way as to undermine the policy objective of maximising full participation in the world of work by creating a disincentive to work;
  3. do not take into account social and labour market barriers, as well as broader social and environmental factors which inhibit labour market participation.
- In light of the differing definitions and measurements of disability used in the various pieces of legislation regarding social security, it is suggested that a broad concept of disability be used. This could be adapted for more specific definitions in each scheme, dependent upon the purpose and coverage of each. Obviously the definitions must be operationalised.”

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### **QUESTION THREE**

- Generally two possible grants, namely disability grant and old age grant.
- Disability grant available to applicants between the ages 18 to 59 .
- This disqualifies Ingrid as she is 63.
- Can therefore apply for Old age grant. The requirements are as follows;
  1. Are a South African citizen, permanent resident or refugee
  2. Are a permanent resident of South Africa

3. Are 60 years or older
  4. And your spouse (if you have one) pass the means test
  5. Are not living in a state institution
  6. Are not receiving payments from another social grant
- Ingrid is not living in a state institution and neither is she a recipient of another state sponsored grant so she qualifies.
  - Can also apply for a children's grant. The requirements are as follows;
    1. the primary care giver must be a South African citizen, permanent resident or refugee;
    2. both the applicant and the child must reside in South Africa;
    3. the child must be 18 years of age or younger;
    4. must provide a birth certificate for the child;
    5. must provide a 13 digit bar coded identity document for the applicant;
    6. applicant must be the primary care giver of the child/children concerned;
    7. the child/children must have been born after 31 December 1993;
    8. the applicant and spouse must meet the
  - Ingrid satisfies all these requirements.
  - the means test –she has little income and is the sole bread winner
  - cannot apply for more than six non biological children

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#### **QUESTION FOUR**

- 27(3) No one may be refused emergency medical treatment.
- S27(3) is an unconditional right. Couched in the negative.
- NHA S5.
- Soobramoney
- Medical treatment must be;
  1. Remedial
  2. Necessary
  3. Available
  4. Patient must be in an emergency situation.
- Excludes ongoing chronic illnesses.

- Must take into account resource constraints
- There is an internal limitation (within available resources), and external limitation S36.
- Where treatment constitutes 'expected' and 'continuous' treatment state will not be bound by this obligation.
- Applies across board, private hospitals, public, clinic, ambulance services etc. e.g stabilisation of a patient before transfer to a state hospital or to a facility covered by their medical aid scheme
- Only patients who suffer from acute renal failure, which can be treated and remedied by renal dialysis are given automatic access to renal dialysis. Those patients who, like Mr Soobramoney, suffer from chronic renal failure which is irreversible are not admitted automatically to the renal programme.

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## **QUESTION FIVE**

- ILO Declaration on Equality of Opportunity and Treatment of Women Workers
    - Equality of opportunity and treatment of women workers can be achieved only through a combination of various legal measures.
    - These measures are: The right to maternity leave, the right to cash benefits to replace wages lost during the leave period, the right of mother and child to health protection; the elimination of maternity as a source of discrimination, and the right to employment security.
    - Leave and benefits for fathers and parents.
  - Statutory entitlements are commonly found in three distinct types of legislation:
    - Social security laws.
    - Labour laws.
    - Anti-discrimination laws.
  - Social protection encompasses more than social benefits.
  - The impact of labour and anti-discrimination legislation on the position of pregnant workers.
4. Maternity Protection Convention, 2000 (No. 183)

- Maternity protection has been a major concern of the ILO since the first year of its existence, when the first Maternity Protection Convention, 1919 (No. 3), was adopted. Although additional Conventions have been adopted over time, the primary concerns of the ILO with respect to maternity protection remain the same:

“to enable women to successfully combine their reproductive and productive roles, and prevent unequal treatment in employment due to their reproductive role.”

- Maternity is a condition which requires differential treatment to achieve genuine equality and, in this sense, it is more of a premise of the principle of equality than a dispensation. Special maternity protection measures should be taken to enable women to fulfil their maternal role without being marginalized in the labour market.
- Despite South Africa not having ratified the Maternity Protection Convention, looking at it is important since its content is of particular significance to South Africa. One of the many commendable aspects about this Conventions is its mention and introduction on a concept titled “maternity discrimination” which essentially serves as a directive to the Member States. When discussing it the Convention states that;

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“Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment.

### **S 39(1)**