Question 1

(a) Which system’s rules should be obeyed, when there is a clash between law and religion as normative systems? (Hint: In your answer you should focus on the differences between legal rules and religious rule) (4)

There are differences between legal rules and religious rules. These two normative systems do not overlap completely. The Ten Commandments proclaim that one should not covet thy neighbour’s possessions. How will a state enforce this? This is not enforced by law. In the same way adultery is not a crime, although it may be regarded a ‘sin’.

Although religion and law are not always similar, there are certain aspects of the South African law that favour the Christian religion. In criminal law blasphemy is an offence: It pertains only to the Christian God. Christian public holidays such as Christmas and Good Friday are given preference by the government. This is justified as part of the accepted religious convictions of the majority.

(b) Martie van der Merwe, a lecturer at New Africa University, applies for promotion. Unfortunately she is not promoted and she complains about the University’s decision. The University gives her a chance to present her case. An impartial person hear the complaint and decided that the rules with regard to promotions within the University are clear and apply to all personnel equally. However, Martie feels she was not promoted simply because she is a woman.

Has formal justice been done in this case? Give reasons for your answer. (4)

The requirements of formal justice have been met, these being:
\(\infty\) Explicit rules must be laid down to show how people must be treated in a specific case. The rules with regard to promotions within the New Africa University are explicit.
\(\infty\) The rules must apply generally, meaning they must apply to all people in the group in the same circumstances. These rules apply generally to all personnel at the University.
\(\infty\) Rules must be applied impartially by legal institutions. These rules are implied impartially because Martie’s complaint was heard by an impartial person.

If the formal law meets certain basic requirements and is always applied in exactly the same way, we say that formal justice has been achieved.

(c) John buys a second-hand motorbike from his friend, Peter, for R10 000. This transaction involves a contract of purchase between John and Peter. John pays Peter the purchase price of R10 000. However, Peter refuses to deliver the motorbike to John as agreed in their contract.

Name two kinds of rights that are applicable to our scenario. Explain what each kind
entails

Real right: Real rights are rights to physical, material things, that we can touch, e.g. a pen or a car. The object of a real right is always a thing, the real right itself is, e.g. right of ownership, right of pledge. In the case of ownership, the owner of property may freely use and enjoy her property. The owner can also alienate it (that is sell or give it away). Peter has the right of ownership to his motorbike, as the owner he decided to sell it to John.

Personal right: A personal right is a right to performance. It is also called a claim. Performance is a human action of either doing or not doing something. We may have a right to the action of another person. The action may be the delivery of something by the seller, the payment of the purchase price by the buyer, or the services of an employee. In this case Peter had the right to receive purchase price from John, which he did. But John also has the personal right to have the motorbike delivered, which Peter failed to do.

(d) During the sixth century AD the emperor of the Eastern Roman Empire, Justinian, wanted his empire to be as glorious as the old Roman Empire and he wanted to bring order to the legal system of his time. Explain how he contributed to the development of the legal system during his reign and the preservation of Roman law in later centuries. (4)

Justinian decided to "codify" Roman law as a whole; that meant that he decided that all the earlier writings of the classical jurists and all the laws which had been passed during the time of the emperors were to be collected and written down as a code. This collection of Roman law by Justinian was called the Corpus Iuris Civilis. By codifying the law, Justinian kept Roman law alive in the Eastern Roman Empire, although this collection of Roman law did not have much influence in the Western Roman Empire at that time. However, the fact that the Roman law had been collected and written down made it possible for Roman law to be received in Europe in about the 12th century AD.

Question 2

(a) Distinguish between criminal law and law of criminal procedure as the divisions of public law (4)

Criminal laws states which acts are crimes and what the penalties/punishments are that are that are imposed by the state for the commission of these crimes.

Law of criminal procedure is concerned with the way in which someone who is suspected of having committed a crime is prosecuted and tried.

These are the divisions of public law, which deal with the relationship between the state and the citizen.

(b) Charl and Charlotte Charles have been married for the past 25 years. During this time they have lived in luxury and have never even thought about what would happen to their wealth if they are not around anymore. On their way to Cape Town for their annual holiday they both die in a car accident. Their three children are now very eager to hear what will happen to their parents’ wealth.
Which division of private law will be applicable to this scenario? Explain in detail what this specific division deals with.

The law of patrimony: which is concerned with a person and their means, in other words things people own that can be given a value in money.

(c) Define legal obligation and name two of the subdivisions that the law of obligations can be divided into. (4)

An obligation is a legal relationship between two or more parties in terms of which one party has a right against another party for performance and the other party has a corresponding duty to perform.

Subdivisions that the law of obligation can be divided into are:
- Law of contract
- Law of delict

(d) Consider the following sources of law and answer the questions that follow.

Foreign law, legal textbooks, articles in law journals and case law.

(i) Which source of law has binding authority in South African courts? Give a reason for your answer. (2)

Case Law is an authoritative source of law, with binding authority in court.

(ii) With reference to your answer in (i), explain the difference between this source of law and the other three sources of law (2)

Foreign law, legal textbooks and articles in law journals are sources of law which merely have persuasive influence in court and do not bind the court, like case law does on the other hand, it is an authoritative source of law.

Question 3

(a) Explain the concept “constitution” (3)

The rules by which a country is governed are found in that country's Constitution. A Constitution is usually a very long document which sets out the structure and functions of government. It also sets out the standards that will have to be used to protect the individual against any abuse of power by the state. In South Africa we have a written Constitution that was adopted in 1996. Although other countries such as England do not have a single written Constitution.

(b) What do you understand by the “separation of state’s powers”? Why is this separation so important? (4)
The powers of the state are separated and divided into three branches, that is; legislative authority (that makes laws), the executive authority (that applies and carries out laws), and the judicial authority (that decides legal disputes). The separation of powers is essential in a democratic state, because if too much power is concentrated in any one branch of the state, this may lead to the abuse of such power.

(c) Briefly discuss the possible consequences of constitutionalism on legislation

The new Constitution of 1996 introduced “constitutionalism”, which means our country is run according to the Constitution, which is the supreme law of the land. All legislation may be challenged in terms of the Constitution, in a court and changed or removed if it is found to be inconsistent with the Constitution.

(d) What is a fundamental right?

Every person is born with human dignity, and it is this human dignity that gives that person a claim to human rights. You do not have to work for these rights or qualify to be given them; they are your natural rights, in other words, they are fundamental to each human being. Each person has these fundamental rights and the state can never take them away. These fundamental rights are divided into 3 categories: first generation rights, second generation rights and third generation rights.

(e) Distinguish between the horizontal and vertical application of the Bill of Rights

**Vertical application** means it applies between the state and the individual or a private institution. **Horizontal application**, they apply between individuals or private institutions.

**Question 4**

(a) Charles Maimela drive at 80km/h on a road where there is a 60km/h speed limit. Charles fails to see Frans Mahlobongwane who is crossing the road. Frans is knocked down and sustains severe injuries. He incurs medical bills to the value of R500 000.

(i) Indicate whether the following statement is correct or incorrect. Motivate your answer in full. (4)

**Incorrect:** two legal disputes may arise from the scenario; civil case and criminal case. Civil case aims for financial damages to compensate for Frans's medical expenses. Criminal case aims to convict a person of a crime, and if convicted punish the person by means of a fine or prison time; in this case the crime of exceeding the speed limit.

(ii) With reference to your answer in (i), if a legal dispute arises from our scenario, can a public prosecutor or a state advocate be a role player in court? Give a reason for your answer (3)
A public prosecutor: In a criminal matter heard in the Magistrate’s Court the state is represented by the public prosecutor. The case of Charles exceeding the speed limit will be a criminal case heard in the Magistrate’s court, as he has broken a statutory law.

(iii) What does the concept “burden of proof” mean in a civil case and on which party does it rest? (3)

In a civil case the plaintiff must be able to prove that it is more likely that what he or she says is true than not true. In law it is said that he/she has to prove her case on a preponderance of probabilities or a balance of probabilities. The duty of proving in a civil case is not quite as heavy as in a criminal case, and it rests with the plaintiff.

(b) Briefly discuss appeal as one of the basic legal principles that forms part of our legal process (5)

(Hint: In your discussion you should refer to possible reasons why a party would want to apply for appeal. You should also briefly discuss how the appeal process works in court)

In a civil matter a party may lodge an appeal with a higher court if he/she is not satisfied with the lower court’s decision. In a criminal matter an appeal may be lodged against the conviction and/or sentence with a higher court. On appeal, the court does not listen to all the oral evidence about facts of the case; the witnesses do not have to repeat all the evidence to the judge. The higher court studies the recordings of the court a quo and then listens to the arguments made by legal representatives. When the appeal is upheld it means the decision of the court a quo is set aside. If the appeal is dismissed, the decision of the court a quo is confirmed. When the matter is an appeal the parties are called appellant and respondent.

Question 5

(a) A norm/right) is a standard of human conduct or human behaviour (1)

(b) (Canon Law/Germanic law) had an important influence on the development of modern law. (1)

(c) (Conflict of laws/Private Law) is mainly concerned with the question of which private law system applies if more than one private law system is involved. (1)

(d) (Case law/legislation) is our most important source of law (1)

(e) If a legal dispute is on appeal, the parties are referred to as (the appellant and the respondent/the appellant and the defendant) (1)
(f) The Supreme Court of Appeal (can/cannot) overrule a decision of the Constitutional Court.

(g) The correct way of referring to a section of an act is as follows (s 2(1)(b)(iii)/s 2(b)(1)(iii)).

(h) The tri-cameral Parliament was a parliament with three houses, one for each of the (white, Indian and coloured population groups/white, Indian and black population groups).

(i) Second generation rights include the (right to freedom of expression/right to education).

(j) When the state declares a state of emergency, certain fundamental rights may be suspended (for a period of time/indefinitely).

SECTION B

QUESTION 1 / VRAAG 1

Law can be defined as:

(1) unwritten, but formal rules of conduct
(2) informal rules of conduct
(3) primary rules meant to guide human behaviour
(4) a body of rules of conduct which has binding legal force

(3) Primary rules meant to guide human behaviour

QUESTION 2 / VRAAG 2

The different normative systems correspond in the sense that:

(1) all these systems govern human behaviour
(2) all these systems bind all communities
(3) the sanction for all these systems is the same
(4) the sanction for all these systems is enforced by the same agent

(1) All these systems govern human behaviour
QUESTION 3 / VRAAG 3

The *Corpus iuris Civilis* is the

(1) codification of Roman classical law by Roman jurists
(2) codification of Roman law by Justinian
(3) codification of Roman-Catholic church law known as canon law
(4) codification of Roman-Dutch law by de Groot and Voet

(2) Codification of Roman law by Justinian

QUESTION 4 / VRAAG 4

Which of the following countries' legal system falls within the common law legal family?

(1) Germany
(2) The Netherlands
(3) Belgium
(4) Australia

(4) Australia

QUESTION 5 / VRAAG 5

Temba and Thandi argue while they are waiting for a taxi at a taxi rank. Temba shouts at Thandi: "Thandi, you are a prostitute!" Thandi is very upset about the incident because some of her co-workers also heard what Temba shouted. She approaches you for legal advice. Which branch of private law will you use to solve her problem?

(1) criminal law
(2) law of persons
(3) law of procedure
(4) law of personality

(4) Law of personality

QUESTION 6 / VRAAG 6

The "common law" of South Africa usually refers to

(1) unwritten law which develops from customs within a community
(2) Dutch law (*placaeten*) which was used during the 17th century in the Cape
(3) writings on law by 17th and 18th century Roman-Dutch jurists as interpreted by our courts
(4) the law of our country which is contained in legislation

(3) Writings on law by 17th and 18th century Roman-Dutch jurists as interpreted by our courts.
QUESTION 7 / VRAAG 7

Which court’s decision cannot create a precedent?

(1) High Court
(2) Supreme Court of Appeal
(3) Magistrate’s Court
(4) None of the above

(3) Magistrate’s Court

QUESTION 8 / VRAAG 8

“Supremacy of the Constitution” means

(a) Parliament can declare any law that is inconsistent with the Constitution to be unconstitutional
(b) The Constitution prescribes standards which must be followed in order to make all law consistent with the Constitution

Which one of the following options is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(4) a is incorrect, b is correct

QUESTION 9 / VRAAG 9

Jonathan Jones is in grade 8. He battles with mathematics. One day his teacher loses her temper, gives him a hiding and calls him “a stupid monkey.” The next day Jonathan refuses to go back to school and his parents go to the headmaster. Which fundamental right of Jonathan has been infringed?

(1) his right to life
(2) his right to a good name
(3) his right to human dignity
(4) his right to physical integrity

(3) His right to human dignity
QUESTION 10 / VRAAG 10

In terms of section 36 of the Constitution the court will take certain factors into account in order to determine whether a limitation is justifiable. Which of the following is not a factor that the court will consider?

(1) nature of the right
(2) purpose of the right
(3) nature and extent of the limitation
(4) purpose and importance of the limitation

(2) Purpose of the right

QUESTION 11 / VRAAG 11

In terms of the Civil Union Act 17 of 2006 gays and lesbians can enter into a marriage with someone of the same sex

(1) True
(2) False

(2) False they can enter into a civil partnership

QUESTION 12 / VRAAG 12

Maureen is involved in a serious car accident as a result of which she is paralysed. She wants to institute an action against the Road Accident Fund for the amount of R10 million. In which court will Maureen institute her claim?

(1) Constitutional Court
(2) Supreme Court of Appeal
(3) High Court
(4) Magistrate’s Court

(3) High Court

QUESTION 13 / VRAAG 13

Mr Mahlobogwane reads through his grandson’s study guide for Introduction to Law. He comes across the term “jurisdiction.” He asks his grandson what this legal term means. His grandson explains that “jurisdiction” means the following:

(1) the nature of the court proceedings
(2) the court’s competence to hear the matter
(3) the geographical area of the court
(4) the nature of the relief that is claimed

(2) The court’s competence to hear the matter
QUESTION 14 / VRAAG 14

Complete the sentence by choosing the correct option

The plaintiff in a legal dispute is always the party who

(1) files the appeal
(2) bears the burden of proof and therefore presents his case first
(3) pays the amount for damages
(4) has the state on his side

(2) Bears the burden of proof and therefore presents his case first

QUESTION 15 / VRAAG 15

Section 3(3) of the Right of Appearance in Courts Act 62 of 1995 determines that attorneys who have acquired the right of appearance in the High Court may also appear in

(1) parliament
(2) the Supreme Court of Appeal
(3) the Constitutional Court
(4) none of the above-mentioned

(3) The Constitutional Court

OCT/NOV 2016

SECTION A

Question 1

1.1. Describe the concept “substantive law”

Substantive law determines the content and the meaning of different legal rules.

1.2. How is substantive justice achieved?

To establish whether substantive justice has been achieved, the content of the rule itself is looked at to determine whether it is just and fair.
1.3. Conrad and George are in grade 11 in St James College and play rugby for the first team. During a match they start punching each other. By doing this, they infringe upon a specific kind of right granted to them in terms of private law.

1.3.1 Identify this kind of right

Personality rights

1.3.2 Write a paragraph on this kind of right. In your answer you should briefly refer to the following: the object/s, the value of the object/s and examples of this kind of right.

Personality rights are the rights each one of us has to parts of our personality. Examples of these rights are the right to physical integrity (that is a right to your own body), the right to your good name or reputation, and the right to your honour. The object of this right would be personality property.

The objects of these rights also have economic value in a broad sense. They have no market value, but what gives them value is that they are scarce and not freely obtainable as far as the holder of the right is concerned.

1.4. During the sixth century AD the emperor of the Eastern Roman Empire, Justinian, wanted his empire to be as glorious as the old Roman Empire and he wanted to bring order to the legal system of his time. Explain how he contributed to the development of the legal system during his reign and the preservation of Roman law in later centuries.

Justinian decided to “codify” Roman law as a whole; that meant that he decided that all the earlier writings of the classical jurists and all the laws which had been passed during the time of the emperors were to be collected and written down as a code. This collection of Roman law by Justinian was called the Corpus Iuris Civilis. By codifying the law, Justinian kept Roman law alive in the Eastern Roman Empire, although this collection of Roman law did not have much influence in the Western Roman Empire at that time. However, the fact that the Roman law had been collected and written down made it possible for Roman law to be received in Europe in about the 12th century AD.

1.5.
Question 2

Larry and Peter are friends. One day they have an argument over a girl which they both wish to date, Larry tackles Peter with a number of fist punches during their argument. Peter reports the incident at the police station; Larry is later prosecuted in terms of a statute that prohibits the crime of assault and has to appear for his trial.

2.1. Which main division of South African law will be applicable in this scenario? Give a reason for your answer. (1)

The main division of law is public law. Public law, regulates relationships that are concerned with public interests (that is, general interests or the interests of the community). If someone commits a crime, this act goes against the interests of the community and must be punished. In this case assault.

2.2. Name one division of your answer in 2.1 (NB: which falls under substantive or material law) that will be applicable to this scenario. Give a reason for your answer (3)

Criminal law states which acts are crimes and what the penalties (punishments) are that are imposed by the state for the commission of these crimes; as substantive law determines the content and the meaning of legal rules.
2.3. With reference to your answer in 2.2, identify the subdivision of law of procedure that will be applicable in our scenario? Give a reason for your answer. (2)

**Law of criminal procedure.** Criminal procedure is concerned with the way in which someone who is suspected of having committed a crime is prosecuted and tried. In this case it will be the procedure that will be followed in trying and prosecuting Larry.

2.4. If the state decided to call a witness during Larry’s trial, which further subdivision of the law of procedure will be applicable? Give a reason for your answer (2)

**Law of evidence.** The law of evidence is concerned with how evidence must be presented before the court.

2.5. Is there any possibility that the law of civil procedure can be applicable in our scenario above? Give a reason for your answer. (2)

No, as the law of civil procedure is the process by which private-law disputes are brought before the courts; and this is a case of assault, which is a public law case.

2.6. Statutory law is a written law. Which state body is responsible for this law? (1)

Legislature (parliament)

2.7. Suppose the Supreme Court of Appeal has just before Larry and Peter’s incident occurred, set a precedent in a case similar to the one in our scenario above. Which court/courts will have to follow this precedent? Give a reason for your answer. (2)

Judicial precedent means that the lower courts are bound by the decisions of the higher (superior) courts. If the Supreme Court of Appeal sets precedent in a case similar to this one, the High Courts and Magistrate’s Court will be bound by this decision.

2.8. Name the two requirements for the operation of the precedent system (2)

- An effective system of law reporting; to enable the lower-ranking courts to see what the higher-ranking courts have held.
- A hierarchy of courts, which means that the courts are divided into ranks, each court being bound by the decisions of the courts above it.

**Question 3**

3.1. Following the decision made by the Constitution Court in 2005, where it found that the definition of marriage was unconstitutional, the Civil Union 17 of 2006 was implemented. How has this Act changed the way in which permanent cohabitation relationships of homo- and heterosexual couples are views? (4)
The Civil Union Act allows same-sex and heterosexual couples to enter into a marriage or a civil partnership in terms of the Act. Civil union partners must choose whether they want to call their union a marriage or a civil partnership (s 11(1)). Regardless of the name they choose, the union has exactly the same consequences which correspond to the consequences of a marriage in terms of the Marriage Act 25 of 1961, that is, a civil marriage (s 13(1)). A civil union dissolves in the same way as a marriage.

3.2. The Constitutional Court found the definition of marriage to be unconstitutional on the grounds of the infringement of certain fundamental rights. **Name these fundamental rights** (1)

Right to equality and the right to human dignity

3.3. What gives a person the claim to have fundamental rights? (1)

Human dignity

3.4. Explain what fundamental rights entail. (3)

Every person is born with human dignity, and it is this human dignity that gives a person a claim to fundamental or human rights. A person does not have to work for these fundamental rights or qualify in any particular way to be afforded them. Fundamental rights are the natural rights of every single person. Therefore, everyone has these rights. The state can never take these fundamental rights away.

Fundamental rights are divided into 3 categories:

a) **First generation rights**: To protect us from abuse of state powers; e.g. right to equality, human dignity, life, freedom of expression, security

b) **Second generation rights**: Relates to socio-economic issues; e.g. right to education, access to healthcare, sufficient food and water

c) **Third generation rights**: Related to group instead of individual issues; e.g. right to clean or unpolluted air, the right to an environment that is not harmful to health or wellbeing.

3.5. Name the measures, as set out in section 36 of the Constitution, in terms of which a right contained in the Bill of Rights may be limited. (6)

The law that limits the right must be of general application, in other words, it must apply to everyone. The limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom; there must be a good reason to limit the right within the context of a constitutional democracy.

All the relevant factors must be taken into account. The questions that have to be asked are: What is the nature of the right?
What is the purpose of the limitation and how important is this purpose?
What is the nature of the limitation and how much of a limitation will it be?
How do the limitation and the purpose of the limitation relate to one another?
Could this purpose be achieved in a less restrictive way?

Question 4

 THEMBA HAS A FIGHT WITH HIS FIANCÉ WHO IS CHEATING ON HIM WITH ANOTHER MAN. LATER THAT EVENING HE DECIDED TO DRIVE TO HIS FRIEND’S HOUSE FOR A FEW DRINKS. ON HIS WAY THERE HE KNOCKS OVER A YOUNG GIRL WHO SUDDENLY JUMPS IN FRONT OF HIS CAR. THEMBA IMMEDIATELY STOPS AND RUSHES TO HELP THE GIRL. WHEN HE GETS O HER SHE IS ALREADY DEAD.

4.1. Identify the legal dispute that will arise from this scenario. Give a reason for your answer (2)

Criminal law case will arise from this scenario, because the state will be involved here as a murder will be tried.

4.2. With reference to your answer in 4.1, what is the purpose of this specific legal dispute? (2)

In a criminal case the state usually wants to punish someone for a crime and therefore, if the accused is convicted, he or she will, for example, pay a fine or go to prison.

4.3. If the case goes to court, who will be the parties considering the fact that the young girl is dead? Give a reason for your answer. (2)

Parties involved in a criminal case:

• State; in a criminal case the state prosecutor (public prosecutor), who represents the state.
• Accused: is represented by his attorney or advocate

4.4. If Themba is accused of the death of the young girl, how can his attendance be secured in a magistrate’s court? (1)

Arrest

4.5. Distinguish between appeal and review. (4)
**Review:** If there has been an irregularity in the procedure, the case can also be reviewed by a higher court, for example, when the proceedings have not been translated properly by an interpreter or the accused has not been given an opportunity to present his or her own case. In these circumstances the person asking for a review is complaining about the way the proceedings have taken place and not, as in appeal, about the decision itself.

**Appeal:** In a civil matter a party may lodge an appeal with a higher court if not satisfied with the lower courts' decision. In a criminal matter an appeal may be lodged against the conviction and/or sentence with a higher court. The higher court merely studies the recordings of the court a quo and then listens to arguments made by legal representatives. When an appeal is upheld it means the decision of the court a quo is set aside. When an appeal is dismissed, it means the decision of the court a quo is confirmed.

**Appellant:** person(s) lodging the appeal. **Respondent:** responding to the appeal.

### 4.6. Should the process of appeal or review be used in the following situations? Give reasons for your answers.

4.6.1 Tebogo sues Unathi for breach of contract. He loses the case. Later it transpires that the presiding officer of their trial is Unathi’s cousin. (2)

**Review:** If there has been an irregularity in the procedure, the case can also be reviewed by a higher court. The irregularity in this case would be that Unathi’s cousin was the presiding officer.

4.6.2 In Pretoria’s magistrates’ court, Tshidi is convicted of shoplifting a cheap shirt. He believes that he should not have been convicted. (2)

**Appeal:** In a criminal matter an appeal may be lodged against the conviction with a higher court, in other words Tshidi believes he should have been convicted, he can appeal the matter in the High Court.

### Question 5

5.1. Formal justice will be achieved if a legal institution applied the rules of formal law (impartially/ unequally)

5.2. In private law the four classes of rights are grouped according to the (subject/ object) of each of the four classes of rights.

5.3. When a person dies and leaves behind a valid will, his/her property will be inherited in terms of the rules of (testate/ intestate) succession.

5.4. Custom is a primary source of law, which is made up of largely (written/ unwritten) rules

5.5. The 1996 Constitution is known as South Africa’s (first democratic Constitution/ a codification of South African law)
5.6. The Constitution sets out (the structure of the judiciary/ parliamentary sovereignty)

5.7. Third generation rights have more to do with (a group/ an individual)

5.8. The application of the Bill of Rights between the state and a private institution is known as the (horizontal/ vertical) application of the Bill of Rights.

5.9. In a criminal case a court’s jurisdiction is determined by (the type of offence/ the location of the parties)

5.10. (Review/ obiter dictum) is one of the basic legal principles that form part of the legal process which should be considered when working with the hierarchy of courts.

SECTION B

QUESTION 1 / VRAAG 1

Indicate the incorrect statement.

(1) Jurists all agree that the concept "law" is easy to define
(2) The law has to change and adapt as society changes.
(3) The law has to balance different interests of different individuals
(4) Moral and religious norms may sometimes overlap with legal norms

(1) Jurists all agree that the concept “law” is easy to define

QUESTION 2 / VRAAG 2

Mr Nkomo and Mr Masina farm in the area of the Vaal River. Mr Nkomo is the owner of the farm Madikwe which is adjacent to the river. Mr Masina, owner of the farm Java, has a right of way over the farm of Mr Nkomo to get his cattle to the river to drink water.

Indicate the most correct statement

(1) Mr Nkomo has an unlimited real right over his farm
(2) Mr Masina has an unlimited real right over his farm
(3) Mr Nkomo has a limited real right over the farm of Mr Masina
(4) Mr Masina has a limited real right over the farm of Mr Nkomo

(4) Mr Masina has a limited real right over the farm of Mr Nkomo
QUESTION 3 / VRAAG 3

Consider the following two statements

(a) Every right has a twofold relationship firstly, the relationship between a legal subject and his/her legal object and secondly, the relationship between a legal subject and holder of the right and other legal subjects

(b) The connection between "law" and "right" is twofold firstly, the law prescribes what the content of a right is, and secondly the law prescribes what the limits to the content of a right are

Which option is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(1) a and b are correct

QUESTION 4 / VRAAG 4

The term "private law" refers to the

(1) body of legal rules that derives from the deciding of court cases
(2) body of legal rules that seeks to regulate the relationship between individuals
(3) body of legal rules that seeks to regulate the relationship between the state and its citizens
(4) legal principle which states that a person has the right to privacy

(2) Body of legal rules that seeks to regulate the relationship between the individuals

QUESTION 5 / VRAAG 5

Which of the following is traditionally classified as a division of the public law?

(1) Law of Contract
(2) Law of Succession
(3) Administrative law
(4) Conflict of laws

(3) Administrative law
QUESTION 6 / VRAAG 6

Themba is fined for driving 60 km/h in a 40km/h zone. What type of law has he transgressed?

(1) Common law  
(2) Private law  
(3) Statutory law  
(4) Constitutional law

(3) Statutory law

QUESTION 7 / VRAAG 7

What does the doctrine of precedent mean?

(1) Judges are bound by statutes  
(2) Judges must decide cases on the facts of the case  
(3) Judges must not apply the law as set out in courts of the same standing  
(4) Judges must apply the law as set out in previous decisions of higher courts

(4) Judges must apply the law as set out in previous decisions of higher courts

QUESTION 8 / VRAAG 8

What does the ratio decidendi of a court decision refers to?

(1) A statement made by the judge in passing  
(2) The reason for the court’s decision of the case  
(3) The principle whereby lower courts are bound by the decisions of higher courts  
(4) A principle of a case which is more broadly formulated by the judge

(2) The reason for the court’s decision of the case

QUESTION 9 / VRAAG 9

Consider the following two statements

(a) The Bill of Rights is the cornerstone of democracy in South Africa and no right in the Bill of Rights may be limited  
(b) In terms of the supremacy of the Constitution, only the President of South Africa is not subject to the Constitution

Which option is correct?

(1) (a) and (b) are correct  
(2) (a) and (b) are incorrect  
(3) (a) is correct, (b) is incorrect  
(4) (a) is incorrect, (b) is correct

(2) a and b are incorrect
QUESTION 10 / VRAAG 10

What are the three sections or branches called that the powers of the state are separated into?

(1) National, provincial and local levels of government
(2) Legislative, executive and judicial authority of the state
(3) Public Protector, Human Rights Commission and Commission for Gender Equality
(4) Magistrates’ Courts, High Courts and the Supreme Court of Appeal

(2) Legislative, executive, and judicial authority of the state

QUESTION 11 / VRAAG 11

Read the following statement and choose the correct option

"In South Africa, all legislation may be challenged in terms of the Constitution, in a court, and changed or removed if it is found to be inconsistent with the Constitution"

(1) True
(2) False

(1) True

QUESTION 12 / VRAAG 12

Derek decides to install a generator on his residential property to use in the event of a power outage. However, the generator emits an excessive amount of unclean fumes. Derek’s neighbours are becoming increasingly distressed by the unclean fumes that the generator is emitting. Which fundamental right is Derek infringing?

(1) The neighbours’ right to life
(2) The neighbours’ right to equality
(3) The neighbours’ second generation rights
(4) The neighbours’ right to an unpolluted environment

(4) The neighbours’ right to an unpolluted environment

QUESTION 13 / VRAAG 13

Read the scenario in QUESTION 12 again and then answer the following question.

Derek’s neighbours decide to apply for a court order to prevent him from operating his generator.

(1) This involves a vertical application of the Bill of Rights
(2) This involves a horizontal application of the Bill of Rights
(3) This involves horizontal and vertical application of the Bill of Rights
(4) This involves an infringement on a second generation right

(2) This involves a horizontal application of the Bill of Rights
QUESTION 14 / VRAAG 14

Indicate the incorrect statement

In the Bill of Rights non-derogable rights include those rights which

(1) are entirely protected by the Constitution
(2) are to a certain extent protected by the Constitution
(3) are never protected by the Constitution
(4) may never be infringed or suspended by the state

(4) May never be infringed or suspended by the state

QUESTION 15 / VRAAG 15

Indicate the correct statement

(1) In all criminal cases the wrongdoer is punished by the state
(2) All criminal cases are heard in magistrates’ courts
(3) In a criminal case a defendant must prove that he is innocent
(4) In a criminal case the prosecutor must prove that the defendant is guilty beyond reasonable doubt

(4) In a criminal case the prosecutor must prove that the defendant is guilty beyond a reasonable doubt.
1.1. The different normative systems differ with regard to three aspects in particular. Name these three aspects. (3)
• To whom are the rules applicable
• What is the sanction for non-compliance
• Who enforces the sanctions

1.2. Distinguish between the concepts “substantive law” and “formal law” (2)

Substantive law determines the content and the meaning of different legal rules. Formal law deals with the procedures that must be followed in legal proceedings.

1.3. How is substantive justice achieved? (4)

To establish whether substantive justice has been achieved, the content of the rule itself is looked at to determine whether it is just and fair.

1.4. Conrad and George are in grade 11 in St James College and play rugby for the first team. During a match Conrad starts punching George. By doing this, Conrad infringes on George’s personality right granted to him in terms of the private law.

Explain what the relation is between the law (in this case private law) and George’s personality right. (3)

The law of personality is concerned with personality rights. Personality rights are the rights each one of us has to parts of our personality. Examples of these rights are the right to physical integrity (that is a right to your own body), the right to your good name or reputation, and the right to your honour. We can say that the objects of these rights also have economic value in a broad sense. They have no market value, but what gives them value is that they are scarce and not freely obtainable as far as the holder of the right is concerned.

1.5. Name two factors which contributed to the survival of Roman law after the split of the Roman Empire (2)

Germanic rulers allowed their Roman subjects to be governed by Roman law. Part played by the Roman Catholic Church. Roman law formed the foundation of church law.

1.6. By using certain criteria we can identify the different legal families. Name three of these criteria. (3)

• Style and technique
• Ideology
• Economic elements

Question 2

Ken Klapman, the neighbour of Silas Ngobeni, is having a loud party late one Monday night. When Silas asks Ken to turn down the music, Ken becomes angry and hits Silas with a bottle, Silas suffers a deep cut to his head. Silas reports the incident at the police station,
Ken is later prosecuted in terms of a statute that prohibits the crime of assault and has to appear in court for his trial.

2.1. Which main division of South Africa law will be applicable to this scenario? Give a reason for your answer (2)

The main division of law is public law. Public law, regulates relationships that are concerned with public interests (that is, general interests or the interests of the community). If someone commits a crime, this act goes against the interests of the community and must be punished. In this case assault.

2.2. Name one division of your answer in 2.1 (NB: which falls under substantive or material law) that will be applicable to this scenario. Give a reason for your answer (3)

Criminal law states which acts are crimes and what the penalties (punishments) are that are imposed by the state for the commission of these crimes; as substantive law determines the content and the meaning of legal rules.

2.3. With reference to your answer in 2.2, identify the subdivision of law of procedure that will be applicable to our scenario? Give a reason for your answer (2)

Law of criminal procedure. Criminal procedure is concerned with the way in which someone who is suspected of having committed a crime is prosecuted and tried. In this case it will be the procedure that will be followed in trying and prosecuting Ken.

2.4. If the state decided to call a witness during Ken’s trial, which further subdivision of the law of procedure will be applicable? Given a reason for your answer (2)

Law of evidence. The law of evidence is concerned with how evidence must be presented before the court.

2.5. Will the court apply the law of civil procedure in this case? Give a reason for your answer. (2)

No, as the law of civil procedure is the process by which private-law disputes are brought before the courts; and this is a public law case.

2.6. Suppose the Supreme Court of Appeal has just before Ken and Silas’s incident occurred, set a precedent in a case similar to the one in our scenario above. Which court/courts will have to follow this precedent? Give a reason for your answer. (2)

The courts that would be bound are the High Courts and the Magistrate’s Courts. Because, judicial precedent means that the lower courts are bound by the decisions of the higher (superior) courts.
2.7. Name the two requirements for the operation of the precedent system
∞ An effective system of law reporting.
∞ A hierarchy of courts

Question 3

3.1. Briefly discuss the possible consequences of constitutionalism on legislation

Therefore, all legislation may be challenged in terms of the Constitution, in a court, and changed or removed if it is found to be inconsistent (in other words, it does not agree) with the Constitution.

3.2. The government has given permission for the testing of nuclear weapons in a remote area of the country. The government feels that it is safe because there is no-one living anywhere near this area. The Green Party does not agree and decides to start a protest action. The Van der Merwe and Mothibes are environmental activists and they decide to join the protest. Jane is a member of the Green Party's legal team. The legal team is seeking a court order to prevent the nuclear testing from going ahead.

3.2.1. Which specific fundamental right has been infringed in this scenario?
The right to an environment that is not harmful to our health or well-being.

3.2.2. Identify and discuss the CATEGORY of fundamental right which has been infringed in this scenario
Third generation rights that are also called ‘green rights’, they have more to do with protecting the group than an individual.

3.3. Name five factors that the court will consider when determining whether the limitation of a fundamental right is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

a) The nature of the right
b) The importance of the purpose of the limitation
c) The nature and extent of the limitation
d) The relation between the limitation and its purpose; and
e) Less restrictive means to achieve the purpose.

3.4. John Brown and Peter Smith have been in a permanent same-sex relationship for many years. They have always dreamt of getting married one day, but unfortunately for them the definition of marriage in SA law did not include permanent same-sex relationships. They were delighted when the Constitutional Court decided in 2005 that these relationships must also be included in the definition of marriage. The court decided that the definition of marriage, in terms of the common law and the
Marriage Act 25 of 1961, is unconstitutional. John and Peter were even more delighted when the Civil Union Act 17 of 2006 came into operation at the end of 2006.

3.4.1. Why did the Constitutional Court decide that the definition of marriage, in terms of the common law and Marriage Act of 1961, is unconstitutional? (1)

Because it is unconstitutional on the grounds of the right to equality and the right to human dignity.

3.4.2. How did the Civil Union Act of 2006 change the legal position with regard to same-sex relationships in SA? (3)

- It allows same-sex couples to enter into a marriage or a civil partnership.
- Civil union partnerships must choose whether they want to call their union a marriage or a civil partnership.
- The union has the same consequences which correspond to the consequences of a marriage in terms of the Marriage Act 25 of 1961.

Question 4

Mr Sipho Sibisi concluded a contract of sale with Mrs Zodwa Pheshwa. In terms of this contract Sipho undertook to sell his motor car, a red Mazda 3, to Zodwa of R180 000. They agreed that Zodwa will pay the purchase price when Sipho delivers the car her. When Sipho wanted to deliver the car, Zodwa refused to pay the purchase price. She told Sipho that she no longer liked the Mazda 3 and was making arrangements to buy another motor car, a blue Toyota Corolla.

4.1. Identify the legal dispute that can arise from the scenario. Given a reason for your answer (2)

Civil case, Sipho may institute a claim for breach of contract, in terms of civil law.

4.2. With reference to your answer in 4.1, what is the purpose of the specific legal dispute? (1)

The main aim in a civil case is usually to claim financial damages, e.g. compensate for medical expenses, damages to a car.

4.3. What role will Sipho and Zodwa respectively play in this legal dispute? Give reasons for your answer. (4)

Sipho- plaintiff
Zodwa- defendant
4.4. What will the onus of proof be in this legal dispute and on whom will it rest? (2)

Onus of proof in a civil case rests with the plaintiff, who must be able to prove her case on a balance of probabilities.

4.5. Which court will have jurisdiction to hear the legal dispute? Give a reason for your answer (2)

The Magistrate’s Court, as this court has jurisdiction to hear civil matters that the amount that may be claimed is not so large. R180 000 will fall within this court’s jurisdiction.

4.6. Should the process of appeal or review be used in the following situations? Give reasons for your answers.

4.6.1. Sipho sues Zodwa for breach of contract. He loses the case. Later it transpires that Zodwa’s uncle has been the presiding officer of the court proceedings. (2)

Review: If there has been an irregularity in the procedure, the case can also be reviewed by a higher court. The irregularity in this case would be that Zodwa’s uncle was the presiding officer.

4.6.2. Sipho sues Zodwa for breach of contract. He wins the case with costs. Zodwa claims that the court has come to an incorrect decision. (2)

Appeal: In a civil matter when a party feels that the court has made an error in its decision, in other words Zodwa is unhappy with the decision, she can appeal to a higher court.

Question 5

5.1. The law consists of norms which the whole community regards as binding and that must be obeyed

5.2. In private law the four classes of rights are grouped according to the object of each of the four classes of rights.

5.3. In the Netherlands it was the reception of Roman law that caused the creation of what was called the Roman-Dutch law

5.4. The South African legal system is classified under the hybrid legal family.

5.5. A/an obligation is a legal relationship in terms of which one party has a right to performance and the other party a corresponding duty to performance.
5.6. The **separation of powers** is essential in a democratic country to prevent abuse of power by one of the divisions of government.

5.7. All persons are born with **human dignity** which gives them a claim to fundamental rights.

5.8. The application of the Bill of Rights between the state and a private institution is known as the **vertical** application of the Bill of Rights.

5.9. In a criminal case a court’s **jurisdiction** is determined by the type of offence committed by the accused.

5.10. The Supreme Court of Appeal is the highest court with regard to **appeals** and **other** cases.

**SECTION B**

**QUESTION 1 / VRAAG 1**

Indicate the correct statement

(1) Justs all agree that the concept "law" is easy to define  
(2) The law does not have to change and adapt as society changes  
(3) The law has to balance different interests of different individuals  
(4) Moral and religious norms never overlap with legal norms

(3) The law has to balance different interests of different individuals

**QUESTION 2 / VRAAG 2**

Mr Nkomo and Mr Masina farm in the area of the N3 highway to Estcourt. Mr Nkomo is the owner of the farm Madikwe which is adjacent to the N3 highway. Mr Masina, owner of the farm Java, has a right of way over the farm of Mr Nkomo to get to the N3 highway to Estcourt.

Indicate the correct statement

(1) Mr Nkomo has a limited real right over his farm  
(2) Mr Masina has a limited real right over his farm  
(3) Mr Nkomo has a limited real right over the farm of Mr Masina  
(4) Mr Masina has a limited real right over the farm of Mr Nkomo

(4) Mr Masina has a limited real right over the farm of Mr Nkomo
QUESTION 3 / VRAAG 3

Consider the following two statements

(a) A personality right is a right to physical integrity which other persons must respect
(b) A personal right is a right to performance against another person or persons

Which option is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(1) a and b are correct

QUESTION 4 / VRAAG 4

Several factors contributed to the reception of English law at the time of the British occupation of the Cape during 1806-1910. Which of the following did not form part of these factors?

(1) Judges and advocates received their legal training in England
(2) The English jury system was received at the Cape
(3) The English law was formally received through legislation
(4) The writings of Johannes Voet were used in legal practice

(4) The writings of Johannes Voet were used in legal practice

QUESTION 5 / VRAAG 5

Which of the following legal systems cannot be grouped within the civil-law legal family?

(1) Dutch legal system
(2) English legal system
(3) French legal system
(4) German legal system

(2) English legal system

QUESTION 6 / VRAAG 6

Legal philosophy (jurisprudence) is the field of law which looks at law from a philosophical perspective. Therefore, different perspectives have emerged. Which one of the following is not a perspective of legal philosophy?

(1) Conflict of laws
(2) Feminism
(3) Natural-law approach
(4) Critical Legal Studies

(1) Conflict of laws
QUESTION 7 / VRAAG 7

Themba is fined for driving 60 km/h in a 40km/h zone. What type of law has he transgressed?

(1) Common law
(2) Private law
(3) Statutory law
(4) Constitutional law

(3) Statutory law

QUESTION 8 / VRAAG 8

Consider the following case reference and complete the sentence by choosing the correct option:

In the case of Naude and Another v Fraser 1998 (4) SA 539 (SCA), Fraser refers to the

(1) plaintiff
(2) defendant
(3) appellant
(4) respondent

(4) Respondent

QUESTION 9 / VRAAG 9

Which one of the following indicates the purpose of an act?

(1) short title
(2) long title
(3) section 1
(4) preamble

(2) Long title
QUESTION 10 / VRAAG 10

Consider the following:

"Supremacy of the Constitution" means

(a) Parliament can declare any law that is inconsistent with the Constitution to be unconstitutional
(b) The Constitution prescribes standards which must be followed in order to make all law consistent with the Constitution

Which option is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(4) a is incorrect, b is correct

QUESTION 11 / VRAAG 11

In what chapter of the Constitution will you find the Bill of Rights?

(1) Chapter 1
(2) Chapter 2
(3) Chapter 3
(4) None of the above

(2) Chapter 2

QUESTION 12 / VRAAG 12

Indicate the incorrect statement

In the Bill of Rights non-derogable rights include those rights which

(1) are entirely protected by the Constitution
(2) are to a certain extent protected by the Constitution
(3) are never protected by the Constitution
(4) may never be infringed or suspended by the state

(4) May never be infringed or suspended by the state
QUESTION 13 / VRAAG 13

Who of the following is not a possible role player during a criminal case in a magistrates' court?

(1) attorney
(2) interpreter
(3) state advocate
(4) witness

(3) State advocate

QUESTION 14 / VRAAG 14

Complete the following sentence by choosing the correct option:

The decision of the High Court in Senekal v Roodt 1983 (2) SA 602 (T) is binding on

(1) the Supreme Court of Appeal
(2) certain magistrates' courts
(3) the Constitutional Court
(4) more than one of the above-mentioned courts

(2) Certain magistrates' courts

QUESTION 15 / VRAAG 15

Consider the following:

Advocates are admitted to the profession by the High Court provided they comply with certain statutory requirements

(a) An LLB degree from any university in South Africa is a statutory requirement for admission to the profession
(b) Prior admission as an attorney with the Law Society is a statutory requirement for admission to the profession

Which option is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(3) a is correct, b is incorrect
SECTION A

Question 1

a) Describe the term "norm". Also name four normative systems that comply with the description of the term "norm" (3)

A norm is standard of human conduct or a rule of human behaviour.

Four normative systems:
i) The law ii) Religion iii) Individual morality iv) Community mores

b) Distinguish between formal justice and substantive justice (3)
Formal justice deals with the procedures that must be followed in legal proceedings (rules, conduct, and evidence).

**Basic requirements that must be met for formal justice to be achieved:**

- There must be explicit rules laid down to show how people must be treated in specific cases
- The rules must apply generally (all people in the group under the same circumstances)
- The rules must be applied impartially by a legal institution (judge may not be biased)

Substantive justice concerns the content of the rule, and not the way in which it is applied.

Here the content of the rule is looked at to determine whether it is just and fair.

**Examples:**

The apartheid rules were specific, applied to all and were applied impartially – however, the content of the rules were unjust and therefore justice was not served.

c) According to South African private law a legal subject can be the bearer of four types of rights. Name these rights as well as their corresponding objects (4)

Real rights (object: a thing)
Personality rights (object: personality property)
Intellectual property or immaterial property rights (object: a non-tangible creation of the human mind)
Personal rights (object: performance)

d) To which legal family does the South African legal system belong? Give reasons for your answer. (5)

South Africa belongs to the hybrid legal family in the sense that various components or legal systems played a role in its development. Roman-Dutch law (which forms part of the civil law legal family), English law (which forms part of the common-law legal family) and African indigenous law (which forms part of the indigenous family) all played a role.

**Question 2**

a) **Charl and Charlotte Charles have been married for the past 25 years. During these years they have lived in luxury and have never even thought about what would happen to their possessions if they are not around anymore. On their way to Cape Town for their annual holiday they both dies in a car accident. Their three children are now very eager to hear what will happen to their parents' possessions.**

(i) Which main division of South African law will be applicable to this scenario? Give a reason for your answer (2)

The main division of the law is private law since private law deals with the legal position of individuals, in this case the deceased estate of Charl and Charlotte Charles.
(ii) Which division of your answer in (i) will be applicable? Explain what this division deals with (3)

The law of patrimony, which is concerned with a person and their means, in other words things people own that can be given a value in money.

(iii) Which subdivision of your answer in (ii) will be applicable? Give reasons for your answer. (3)

The law of succession which is concerned with who inherits from a person who dies, that is, who receives the property of the deceased.

(iv) Which forms of the subdivision in (iii) will be applicable to our scenario? Give a reason for your answer. (2)

The further subdivision applicable is intestate succession. If there is no will the deceased’s property will be distributed in accordance with the rules of intestate succession. These rules also come into operation when the deceased has not left behind a valid will. In the given set of facts Charl and Charlotte Charles did not leave behind a will, so their property will be dealt with in accordance with the rules of intestate succession.

b) Mr and Mrs Clark have been married for the past 10 years. Two years ago Mr Clark, who is a well-known businessman in the community, began an extra-marital relationship with his neighbour’s wife. When Mrs Clark found out about her husband’s adultery a year later, she decided to divorce him. She approaches you for legal advice and asks you to explain to her which sources of law you will use in the divorce case against Mr Clark.

(i) Name the source of South African law that you will have to consult first when you start preparing Mrs Clark’s case. (1)

Legislation: Divorce Act 70 of 1979

(ii) You explain to Mrs Clark that a distinction is made between two kinds of sources of law in South African law. To which kind of sources of law does your answer in (i) belong? (1)

Authoritative source.

c) Write a short paragraph on African indigenous law as a source of South African law (3)

Indigenous law is largely unwritten law. Indigenous law has a more formal status within South African law. It has been recognised in various statutes and does not, in each case, have to be measured against the requirements for custom. In the past, indigenous law was recognised as a special law which could be applied only to blacks. However, it has now been recognised as a source of law by the Constitution. In terms of the Constitution, South African courts must apply indigenous law where it is applicable.
Question 3

\(a\) Johan and Yonela are in an interracial relationship. One day a conservative and corrupt policeman, Mr Chabede, walks up to the couple and tells them that they are “immoral and second class citizens”. He tells them that he has the power to arrest them and that he will do exactly that unless they each pay him R300.

(i) Identify and discuss in detail the kind of fundamental rights that will protect Johan and Yonela in this situation. (5)

They will be protected by the right to equality and the right to human dignity. These rights are to human dignity. These rights are entrenched in the Constitution in which unfair discrimination on the grounds of race, marital status, ethnic or social origin and colour is prohibited. The right to human dignity cannot be alienated at all and must be respected and protected.

(ii) What type of application of the Bill of Rights is applicable in this scenario? (1)

The vertical application.

Mr. Chabede in his official capacity as a police represents the state and Johan and Yonela are people adversely affected by a member of a state organ.

(iii) Mr Chabede argues that fundamental rights may be limited and that his conduct amounts to justifiable limitations of Johan and Yonela’s rights. How will a court determine whether a limitation of a fundamental right is justifiable? (4)

The court will take the following factors into account: o The nature of the right o The importance of the purpose of the limitation o The nature and extent of the limitation o The relations between the limitation and its purpose. o The less restrictive means to achieve the purpose.

\(b\) Melissa and Rudene have been in a same-sex relationship for the past six years. They want to get married, but are not sure whether gay people are allowed to marry. You are Melissa and Rudene’s lawyer and they come to you for advice. Keeping the influence of the Constitution in mind, explain to Melissa and Rudene what their legal position is and what different options they have at their disposal regarding their union. (5)

The constitutional Court held that a permanent cohabitation relationship unit be included in the marriage definition. The Civil Union Act allows same sex and heterosexual couples to enter into a marriage or a civil partnership in terms of the Act.
Civil union partners must choose whether they want to call their union a marriage or a civil partnership. The union has the same consequences of a marriage in terms of the Marriage Act 25 of 1961.

Question 4

(a) The neighbour of Sipho Ngobeni, Ken Klapman, is having a loud party late one Monday night. When Sipho asks Ken to turn down the music, Ken becomes angry and hits Sipho with a bottle. Sipho suffers a deep cut to his head. He is admitted to hospital where he receives treatment for his injuries. Sipho wants to institute a case against Ken for the hospital costs but does not know whether he should approach an attorney or an advocate for legal advice. He approaches you, a first-year law student at Unisa, and asks some questions.

(i) What kind of case might arise from the treatment of Sipho’s injuries? Give a reason for your answer.  (2)

A civil claim, in a civil case the main aim is usually to claim financial damages, e.g. medical expenses, or damages to a car. In this case it would be the medical expenses that Sipho has incurred

(ii) Which will Sipho have to approach for legal advice in this case - an attorney or an advocate?  (1)

Attorney

(iii) Sipho does not understand the difference between an attorney and an advocate. Explain to him what the differences are with reference to academic and professional requirements, their functions, their right of appearance in the courts and their membership of professional bodies.  (4)

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Attorneys are trained lawyers who can advise clients and represent them in court. Attorneys have to apply to the High Court to be admitted to the legal profession.

**Academic and professional requirements:**
LLB degree, practical legal training for at least two years at a private firm of attorneys, a legal-aid clinic or a community-aid centre (or a period of only one year if a practical legal training course of five months has been completed), and the successful completion of an attorneys admission examination. All practising attorneys must belong to the Law Society (a professional body for attorneys) in their province. They perform a wide variety of other functions as well. E.g., they do transfers of property from one person to another, drafting of wills and other legal documents (such as antenuptial contracts), administration of deceased estates, etc.

The main function of advocates is to represent clients in court. They are also admitted to the profession by the High Court, provided that they comply with certain statutory requirements.

**Academic and professional requirements:**
Four year LLB degree. Practising advocates usually belong to one of the professional Bar Councils which are linked to the divisions of the High Court. If you want to practice as advocate at one of the Bar Councils, you will first have to do practical legal training with one of the already qualified advocates (i.e. pupillage for a prescribed period) and then successfully complete the Bar Council's examination.

(iv) Who will be the parties in the case?  
∞ Plaintiff
∞ Defendant

(v) What will the onus of proof be in this case and on which party will it rest?  (2)

In a civil case the onus of proof rests with the plaintiff, who must be able to prove that it is more likely that what she says is true than not true. She has to prove her case on a preponderance of probabilities or a balance of probabilities.

b) Explain the difference between an appeal and a review.  (4)

**Review:** If there has been an irregularity in the procedure, the case can also be reviewed by a higher court, for example, when the proceedings have not been translated properly by an interpreter or the accused has not been given an opportunity to present his or her own case. In these circumstances the person asking for a review is complaining about the way the proceedings have taken place and not, as in appeal, about the decision itself.

**Appeal:** In a civil matter a party may lodge an appeal with a higher court if not satisfied with the lower courts’ decision. In a criminal matter an appeal may be lodged against the conviction and/or sentence with a higher court. The higher court merely studies the recordings of the *court a quo* and then listens to arguments made by legal representatives. When an appeal is upheld it means the decision of...
the court a quo is set aside. When an appeal is dismissed, it means the decision of the court a quo is confirmed. **Appellant:** person(s) lodging the appeal. **Respondent:** responding to the appeal.

**Question 5**

5.1. A **servitude** is an example of a real right which entitles the holder of the right to use a road through the land of another person.

5.2. **Intellectual property** rights relate to creations of the human mind.

5.3. The **English law** relating to insolvency and company law was received at the Cape in the 19th century.

5.4. There are three ways in which obligations arise, namely: agreement, delict and **unjustified enrichment**.

5.5. The attendance of an appeal in the Magistrate’s Court can be secured by means of arrest, a notice issued by a **peace officer** and a **summons** issued by the clerk of the Court.

5.6. In criminal matters the type of offence and the **sentence** determines a court’s jurisdiction.

**SECTION B**

**QUESTION 1**

Which of the following is not a characteristic of the law?

(1) The law governs human conduct  
(2) The law functions through political institutions  
(3) The law is enforced by state organs  
(4) The law must be obeyed by the whole society

(2) The law functions through political institutions

**QUESTION 2**

Formal law refers to

(1) The rules that determine how court cases are decided  
(2) Legislation that governs human conduct  
(3) The part of the law that determines the meaning of legal rules  
(4) The part of the law that deals with the relationship between individuals
(1) The rules that determine how court cases are decided

QUESTION 3
Which one of the following countries' legal systems falls within the common-law legal family?

(1) Germany
(2) The Netherlands
(3) Belgium
(4) Australia

(4) Australia

QUESTION 4
Which of the following statements pertaining to the connection between law and right is incorrect?

(1) The law balances the interests of individuals
(2) The law dictates what the content of a right is
(3) The content of a right is limited
(4) A right refers to a moral principle

(4) A right refers to a moral principle.

QUESTION 5
What did the reception of Roman law in the Netherlands cause?

(1) The creation of a common Western legal tradition
(2) The creation of a common European legal tradition
(3) The creation of the Roman-Dutch law
(4) The creation of the Dutch law

(3) The creation of the Roman-Dutch law

QUESTION 6
The following legal disciplines fall within public law

(1) private international law, administrative law, criminal law
(2) mercantile law, constitutional law, law of obligations
(3) family law, law of succession, law of patrimony
(4) international law, law of procedure, criminal law

(3) Family law, law of succession, law of patrimony
QUESTION 7

Consider the following two statements

(a) Constitutional law is concerned with the institution and organisation of the state as well as the governing of state powers
(b) Constitutional law controls the administration of the state in general, but in particular the state’s relationships with citizens

Which option is correct?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct

(3) a is correct, b is incorrect

QUESTION 8

Consider the following case reference and complete the sentence by choosing the correct option

In the case of *Naude and Another v Fraser* 1998 (4) SA 539 (SCA) 1998 refers to the year in which the

(1) case was decided
(2) case commenced
(3) case was reported
(4) case was postponed

(3) Case was reported

The Constitution has set up a number of state institutions to support our democracy. Which of the following is not such an institution?

(1) The South African Revenue Service
(2) The Commission for Gender Equality
(3) The Electoral Commission
(4) The Auditor-General

(1) the South African Revenue Services

QUESTION 10

In which chapter of the Constitution will you find the Bill of Rights?

(1) Chapter 1
(2) Chapter 2
(3) Chapter 3
(4) None of the above
(2) Chapter 2

QUESTION 11

Certain rights contained in the Bill of Rights are non-derogable. Which of the following rights is protected in its entirety?

(1) Right to equality
(2) Right to human dignity
(3) Right to freedom and security of the person
(4) Right to property

(2) Right to human dignity

QUESTION 12

In which section of the Constitution will you find the limitation clause?

(1) Section 9
(2) Section 13
(3) Section 26
(4) None of the above

(4) None of the above  Limitation clause is found in Section 36

QUESTION 13

Mr Ngcobo reads through his grandson’s study guide for Introduction to Law. He comes across the factors that determine a court’s jurisdiction in a case. He asks his grandson what these factors would be in a civil case.

The correct answer is

(1) The court’s competence to hear the case
(2) The nature of the court proceedings
(3) The type of offence and the sentence
(4) The nature of relief and the amount claimed

(4) The nature of relief and the amount claimed

QUESTION 14

The opposing parties in a criminal case can possibly be known as the

(1) plaintiff and accused
(2) applicant and defendant
(3) appellant and respondent
(4) state and defendant
(4) State and defendant *(in a criminal case the defendant is known as the accused)*

QUESTION 15

Jennifer was involved in a car accident and sustained serious injuries. She wants to institute a claim of R2 million against the driver of the other car. Which court will she approach with her case?

(1) Magistrate’s Court
(2) High Court
(3) Supreme Court of Appeal
(4) Constitutional Court

(2) High Court
SECTION A

Question 1

a) Name the four characteristics of the law

1. The law governs human behaviour/conduct.
2. The law should be obeyed by all of society.
3. The law is enforced by state organs.
4. By ignoring or disobeying the law we may be prosecuted and punished.

b) Rudente and Melissa are in a same-sex relationship. They live in an exclusive neighbourhood in Pretoria. The residents of this neighbourhood are very conservative. Whenever the couple walks down the street holding hands, neighbours make insulting remarks about them.

Name and describe the normative system that you can identify from this scenario

Community mores.

Community mores are the norms of a whole community; they are collective morals, views about free love, same-sex relationships or interracial marriage all form part of this. The sanction for non-compliance is varying degrees of disapproval by other members of society.

c) What is the connection between “law” and “right”? 

Law and Right are connected, because it is the rules of law that decide on what the powers of what the holder of a right are; that is the content of a right; and what the limits to the content of the right are.

d) Name the most important characteristic of the civil-law legal family. Also name one legal system grouped within this legal family.

The part played by Roman law is the most important characteristic common to legal systems within this group.

One legal system grouped within this legal family are the **French**.

e) Explain why the South African legal system is classified as a hybrid legal system

South African law is classified as a hybrid legal system because various components or legal systems played a role in its development. Roman-Dutch law (which forms part of the civil-law legal family), English law (which forms part of the common law legal family), and African indigenous law (which forms part of the indigenous family) all played a role.
Question 2

(a) Karel entered into an agreement with New Visions Kitchens to renovate their kitchen. They agreed that New Visions Kitchens would replace their old stove with a new Easycook stove. The new stove would have a two-year guarantee. Karel and Martie could not wait to try out the new stove and invited their best friends for dinner. To their utter disappointment and anger, the oven failed before the meal was cooked. They had to go to a restaurant for dinner instead. The following day Karel’s brother, who repairs electrical appliances, took a look at the stove and told him that it was not a new stove. When Karel phoned New Visions Kitchens, they refused to speak to him. To make matters worse, it appeared that New Visions Kitchens had destroyed a fish pond with exclusive species of fish in Karel’s garden by dumping some of the building rubble in it.

(i) Which main division of South African law will be applicable to this scenario? Give a reason for your answer (2)

The main division of the law is private law: since it deals with the relationship between individuals, in this case between Karel and New Visions Kitchens.

(ii) Which division of your answer in (i) will be applicable? Give a reason for your answer.

(2) The law of patrimony: which is concerned with a person and their means, in other words things people own that can be given a value in money.

(iii) Which subdivision of your answer in (ii) will be applicable? Give a reason for your answer (2)

Law of obligations: which is the legal relationship between two or more partners (Karel and New Visions Kitchens), in terms of which one party has a right against another for performance and the other has a corresponding duty to perform. Obligation may arise through contract, delict or unjustified enrichment.

(iv) Name two further subdivisions of your answer in (iii) that will be applicable to our scenario? (2)

∞ Law of contract
∞ Law of delict

(b) Mr and Mrs Clark have been married for the past 10 years. Two years ago Mr Clark, who is a well-known businessman in the community, began an extra-marital relationship with his neighbour’s wife. When Mrs Clark found out about her husband’s adultery a year later, she decided to divorce him. She approaches you for legal advice.

Name two sources of South African law that you will use to provide Mrs Clark with legal advice (2)

∞ Legislation
Case law

(c) Indicate whether custom is an authoritative or persuasive source of the law and name the requirements that a custom has to fulfil in order to be recognised as a legal rule (5)

Custom is an authoritative source of law.

Requirements that a custom has to fulfil in order to be recognised as a legal rule:

- Custom must be reasonable
- Custom must have existed for a long time.
- Custom must be generally recognised and observed by the community.
- The contents of the custom must be definite and clear.

Question 3

(a) A number of special features have been built into the Constitution of 1996 to ensure the success of our democracy. One of these features is the supremacy of the Constitution. Discuss this feature. (4)

The Constitution is the supreme (highest) law of the Republic of South Africa. Therefore, everyone (even the President), every organisation or institution, as well as all law are ruled by the Constitution. The new Constitution of 1996 introduced ‘constitutionalism’, which means that our country is run according to the Constitution which is the supreme law of the land. Therefore, all legislation may be challenged in terms of the Constitution, in a court, and changed or removed if it is found to be inconsistent with the Constitution.

(b) David Berman applied for a post as engineer at a large construction company, Oxtron. It is a well-known fact that all the directors of Oxtron are Catholic. On his application form David mentions that he is Jewish. When he hands in his application at the office of Oxtron, the receptionist informs him that only Catholics can apply for the post and because David is Jewish, his application will not be considered.

(i) Which fundamental right has been infringed in this scenario? Give a reason for your answer (2)

The right that has been infringed in this scenario is the right to equality, found in section 9 of the Constitution (Bill of Rights), and more particularly discrimination on the basis of religion. David’s right to equality, to not be discriminated against on the basis of religion is being infringed by Oxtron.

(ii) Fundamental rights in the Bill of Rights can be applied in two ways. Which way is applicable to this scenario? Give a reason for your answer. (2) Horizontal application—because it is a person or persons in the firm who are discriminating against David; it is individual against individual, this is an example of the horizontal application of the right to equality.

(c) What is the purpose of section 36 of the Constitution? (2)
Section 36 of the Constitution, also known as the limitation clause, sets out the criteria in terms of which a right contained in the Bill of Rights may be limited. Thus, if the state wishes to limit a right, it will have to make sure that its actions are in agreement with the criteria (or measures) contained in the Bill of Rights under section 36.

(d) Discuss the influence of the Constitution on criminal law by specifically focusing on the position of the death penalty in South African law. Refer to relevant case law in your discussion. (5)

An accused has constitutional rights which must be observed throughout the criminal proceedings. In *S v Makwanyane*, the Constitutional Court held that death penalty is cruel, inhuman and degrading and in conflict with the provisions of the constitution as set out in the Bill of Rights and an unconstitutional form of punishment. In simpler terms the court abolished death penalty and other forms of punishment.

**Question 4**

(a) Thee neighbour of Sipho Ngobeni, Ken Klapman, is having a loud party late one Monday night. When Sipho asks Ken to turn down the music, Ken becomes angry and hits Sipho with a bottle. Sipho suffers a deep cut to his head. He is admitted to hospital where he receives treatment for his injuries. Sipho alleges that Ken started the fight, but Ken denies this, Sipho decides to lay a charge of assault against Ken. Both appear in the magistrate’s court. After judgment has been delivered, Ken feels that he has been wronged since he has not been given the opportunity to present his own case.

(i) Name the kind of case that might arise from the charge of assault. Give a reason for your answer. (2)

This will be a criminal law case, because the state will be involved here and assault is a criminal offence.

(ii) What is the purpose of the kind of case that you defined in (i)? (1)

In a criminal case the state wants to punish someone for a crime.

(iii) Name the parties who will be involved in this case (2)

∞ State
∞ Accused

(iv) Name three ways in which the offender’s attendance can be secured in court. (3)

∞ Arrest
∞ Notice issued by peace officer
∞ Summons
(v) Who will be the presiding officer in this court be?  

The magistrate

(vi) Name two factors that will determine the court’s jurisdiction in this case.  

∞ The type of offence, and  
∞ The sentence

(vii) What will the onus of proof be in this case and on which party will it rest?  

The onus of proof will rest with the state (prosecutor), who must prove beyond a reasonable doubt that the accused is guilty.

Question 5

5.1. **Substantive Law** is that part of the law that determines the content and meaning of the different legal rules.

5.2. The right to your good name is an example of a **personality right**.

5.3. The Dutch legal system is an example of the **Civil Law** legal family.

5.4. **Public Law** deals with the relationship between the state and the citizen.

5.5. The purpose of an act is set out in the **long title** of an act.

5.6. The law of a country which is not contained in legislation is called **common law**.

5.7. The application of the Bill of Rights between individual's and/ or private institutions is known as the **horizontal** application of the Bill of Rights.

5.8. The branch of the state that applied and carries out law is known as the **executive** authority of the state.

5.9. In a **civil** case the jurisdiction of the court may be determined by the nature if the relief claimed.

5.10. A **court orderly** is responsible for keeping order in a magistrate’s court.
SECTION B

QUESTION 1

George buys a house from David for R500 000. They enter into an agreement of sale according to which the house becomes George’s property on payment of the amount agreed upon. What is David’s right to payment called?

(1) personality right
(2) personal right
(3) real right
(4) intellectual property right

(2) Personal right

QUESTION 2

Which one of the following is an example of a real right?

(1) copyright
(2) a servitude
(3) a right to a good name
(4) a contractual obligation

(2) A servitude

QUESTION 3

The following legal disciplines fall within private law:

(1) international law, administrative law, criminal law
(2) mercantile law, constitutional law, law of obligations
(3) family law, law of succession, law of patrimony
(4) law of criminal procedure, law of evidence, law of persons

(3) Family law, law of succession, law of patrimony

QUESTION 4

Some of the areas of law fall within both public law and private law. Which area is the odd one out?

(1) conflict of laws
(2) labour law
(3) mercantile law
(4) law of contract

(4) Law of contract
QUESTION 5

The fact that South African law is not codified means that

(1) the Constitution is the only authoritative source of law
(2) the law is only found in one authoritative source of law
(3) the law is not found in only one authoritative source of law
(4) the codifications of foreign legal systems must be consulted

(3) The law is not found in only one authoritative source of law

QUESTION 6

The principle in South African law which determines that lower courts are bound by the decisions of higher courts is known as the principle of

(1) ratio decidendi
(2) hierarchy of courts
(3) judicial precedent
(4) separation of powers

(3) Judicial precedent

QUESTION 7

The Minister of Environmental Affairs and Tourism refuses to grant the fishermen of Saldanha Bay licenses to use their 4x4 vehicles on the beach. Which branch of the state's power is applicable in this case?

(1) parliament
(2) legislative authority
(3) executive authority
(4) judicial authority

(3) Executive authority

QUESTION 8

Which fundamental right is the odd one out?

(1) the right to freedom and security of the person
(2) the right to human dignity
(3) the right to education
(4) the right to freedom of expression

(3) The right to education
QUESTION 9

Read the following scenario and indicate the correct statement.

Parliament has published a Bill in which it states that fishermen in the Cape will no longer be allowed to sell the fish that they have caught on the beach. The fishermen are very upset and regard this as an infringement on their right to freedom of trade. The fishermen hold a march and hand a petition to the Minister of Trade and Industry. During the march some of the fishermen carry the knives that they use to clean the fish. One of the fishermen cuts open a policeman’s arm with his knife. The policeman sets his police dog loose on the man.

(1) The fishermen have an unqualified right to assemble, demonstrate and petition
(2) The right to freedom of trade is an absolute right that may not be limited
(3) The fishermen may be armed to defend themselves against the police
(4) The fishermen must be unarmed

(4) The fishermen must be unarmed

QUESTION 10

Read the following scenario and indicate the correct statement.

After a series of bomb explosions in restaurants and other public venues for which Action Freedom Africa has claimed responsibility, a state of emergency is declared by parliament. One of the members of Action Freedom Africa is caught in a roadblock and is detained in terms of the emergency regulations. He is tortured to extract information from him and told that, in terms of the emergency regulations, he had no rights at all. He eventually revealed the names and whereabouts of several of his comrades. One of these comrades approaches Jane Motibe, who is a member of the Concerned Lawyers Association, to inquire about the rights of people detained during a state of emergency. Jane advises him that

(1) even during a state of emergency a person may not be tortured
(2) during a state of emergency the right to life is temporarily suspended
(3) detainees may be tortured if they refuse to answer questions
(4) the Bill of Rights is suspended entirely during a state of emergency

(1) Even during a state of emergency a person may not be tortured

QUESTION 11

Who receives the evidence collected by the investigating officer and then decides whether the suspect should be charged in a magistrate's court?

(1) a public prosecutor
(2) a state advocate
(3) a judge or a magistrate
(4) a defence advocate

(1) A public prosecutor
QUESTION 12

The opposing parties in a civil case can possibly be known as

(1) plaintiff and accused
(2) applicant and defendant
(3) appellant and respondent
(4) state and defendant

(1) Plaintiff and accused *(In a civil case the accused is known as a defendant)*

QUESTION 13

Attorneys are regarded as general legal practitioners and perform a wide variety of functions. Which one of the following does **not** fall within the scope of their functions?

(1) advising and representing clients in court
(2) transferring of property from one person to another
(3) serving summonses to appear in court
(4) drafting of legal documents for example a will

(3) Serving summonses to appear in court

QUESTION 14

John Smith was awarded a claim of R500 000 by the High Court against Peter Nel. Peter caused a motor car accident in which John sustained severe injuries. Peter is not satisfied with the ruling of the court, because he is of the opinion that the accident was not his fault.

Which court can Peter approach next?

(1) Constitutional Court
(2) Magistrate's Court
(3) Supreme Court of Appeal
(4) None of the above courts

(3) Supreme Court of Appeal

QUESTION 15

**Consider** the following two remarks

(a) The Constitutional Court can hear appeals on any matter from the High Courts
(b) The Supreme Court of Appeal can hear appeals on all matters from the High Courts, except constitutional matters

Which option is **correct**?

(1) (a) and (b) are correct
(2) (a) and (b) are incorrect
(3) (a) is correct, (b) is incorrect
(4) (a) is incorrect, (b) is correct
(2) a and b are incorrect