



2015 MAY/JUNE

2015 OCT/NOV

2014 MAY/JUNE

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2013 MAY/JUNE

2013 OCT/NOV

SECTION A

QUESTION 1 (a)

1. The law are norm which apply to the whole community regards as binding and must be obey as well as community mores are norms which apply to the community or group within that community.
2. The sanction for non- compliance with the law will result in prosecution, punishment or payment of a fine whereas the sanction for non-compliance with community mores is rejection or discrimination by other member of the community.
3. The law is enforced by the State whilst community mores are enforced by the community.

b) Formal Justice

Deals with the **procedures** that must be followed in legal proceedings (rules, conduct, 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)

c) Real rights (object : a thing)

Personality rights (object : personality property)

Intellectual property or immaterial property (object : a non-tangible creation of the human mind.

Personal rights (object : performance)

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

d) South Africa belongs to the hybrid legal family in the sense that various components or legal systems played a role in the development its legal systems. 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)(i) The main division is Private law which deals with the relationship between individuals and other individuals. In the given set of facts only individuals are involved that is parents and their children.

(ii) Law of Patrimony: Law of Patrimony is concerned with a person and their means, in other words things people own that can be given a value in money.

(iii) Law of succession. The law of succession is concerned with who inherits from a person who dies, in other words who receives the property of the deceased.

(iv) The further subdivision applicable is interstate succession in the sense that If there is no will, the deceased's property will be given away in accordance with the rules of what is called "intestate succession". These rules also come into operation when someone has not left a valid will. In the given set of facts Carl and Charlotte did not leave a will so the property will be dealt with in accordance to the intestate succssesion.

b) It means that the lower courts are bound by the decisions of the higher (superior) courts. There are two requirements for the operation of the precedent system:

(1) an effective system of law reporting (to enable the lower-ranking courts to see what the higher-ranking courts have held)

(2) a hierarchy of courts (in other words, the courts are divided into ranks, each court being bound by the decisions of the courts above it) In South African law both these requirements are complied with.

Question 3

a) Supremacy of the Constitution

Bill of Rights

Separation of powers

Structure of the Judiciary

Institutions

b) The powers of the state are separated and divided into three sections (branches), namely the legislative authority (that makes laws), the executive authority (that applies and carries out laws) and the judicial authority (that decides legal disputes)

c) 1st Generation Rights

- 'Blue Rights'

- To protect us from abuse of state powers

- Ex: right to equality, human dignity, life, freedom of expression, security

2nd Generation Rights

- 'Red Rights'

- Relates to socio-economic issues

- Ex: right to education, access to healthcare, sufficient food and water

3rd Generation Rights

- 'Green Rights'

- Related to group instead of individual issues

- Ex: right to clean or unpolluted air, the right to an environment that is not harmful to health or wellbeing

d) To protect us from abuse of state powers

Question 4 (a)

(i) Two legal disputes that might arise are civil case and criminal case. Civil case aims for financial damages to compensate for medical expenses, damages to a car. Criminal case aims to convict a person(s) of a crime and, if convicted, punish the person(s) by means of a fine or prison time

(ii) Magistrate Court

(iii) Defendant (Charles) and Plaintiff (Frans)

(iv) Plaintiff must be able to prove case on a balance of possibilities.

b) 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 whereas 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. An appeal is upheld: the decision of the court a quo is set aside An appeal is dismissed: the decision of the court a quo is confirmed. Appellant: person(s) lodging the appeal .Respondent: responding to the appeal.

Question 5

- (a)** Substantive law
- (b)** Legal subjects
- (c)** Personality rights
- (d)** Roman law
- (e)** Public law
- (f)** Parliament

(g) Ratio decidendi

(h) Vertiact

(i) General

(j) Court Orderly

SECTION B

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SECTION A

QUESTION 1

- (a) Individual morality norms/standards that every individual sets for himself whereas the law are norms which the whole community regards as binding and must be obeyed.

The sanction for non-compliance with individual morality is personal and self-imposed (remorse). Conversely, the sanction non-compliance with the law is prosecution or punishment, compensation to an injured party.

Individual morality is enforced by an individual whilst the law is enforced by the state.

- (b) 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)

- (c) (i) Intellectual Property Rights

(ii) A dual relationship entails : A relationship between a legal subject and the object of the right (person - object); A relationship between the legal subject who is the holder of the right, and other legal subjects (person - person).

- (d) Personality Rights are rights each one has to parts of his/her personality for instance the right to physical integrity, the right to your good name/reputation, the right to honour whereas personal right is a right to performance. Also called a claim for example Delivery, payment, service. Action of doing or not doing something.
- (e) Civil law legal family ,the part played by Roman law is the most important characteristic common to legal systems within the group whilst one of the most important characteristics of the common law legal family is case law.

QUESTION 2

- (a) (i) Private law in the sense that it deals with relationships between an individual and an Individual.
- (ii) Law of Patrimony is concerned with a person and their means, in other words things people own that can be given a value in money.
- (iii) Law of obligations. 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. There are three ways in which obligations arise, namely agreement(ex contractu), delict (ex delicto) and unjustified enrichment.
- (iv) Law of contract and Law of delict.
- (b) Two sources of the law namely authoritative sources and other sources (persuasive sources). Authoritative sources they give authority (weight/power) to lawyers' arguments that is they have an authoritative influence and they are used first whenever there is a problem whereas other sources merely have a persuasive influence and If, after using all the authoritative sources in the order set out above, lawyers and judges cannot find anything on a particular matter, they may then turn to other modern legal systems in order to look for a similar legal principle (a principle is a basic rule or truth) that could possibly be used to decide the case.

- (c) The case decided by the Supreme Court of Appeal due to the judicial precedent which means that the lower courts are bound by the decisions of the higher (superior) courts. There are two requirements for the operation of the precedent system: (1) law reporting an effective system of law reporting (to enable the lower-ranking courts to see what the higher-ranking courts have held) (2) a hierarchy of courts (in other words, the courts are divided into ranks, each court being bound by the decisions of the courts above it)

QUESTION 3

- (a) Supremacy of the Constitution

Bill of Rights

Separation of powers

Structure of the Judiciary

Institutions

- b) 1 f

2 g

3 a

4 h

5 c

6b

7d

8g

- (b) Incorrect because 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. 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.

- (c) 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.

QUESTION 4

- (a) (i) Two legal disputes that might arise are civil case and criminal case. Civil case aims for financial damages to compensate for medical expenses, damages to a car. Criminal case aims to convict a person(s) of a crime and, if convicted, punish the person(s) by means of a fine or prison time.

(ii) Onus of proof: In a civil case the plaintiff must be able to prove that it is more likely that what she says is true than not true. In law we would say that she has to prove her case on a preponderance of probabilities or a balance of probabilities. The duty of proving (or onus of proof) in a civil case is not quite as heavy as in a criminal case. In a criminal case the state must prove its case beyond reasonable doubt.

(iii) Regional Magistrate Court

(iv) Magistrate

- (b) Incorrect because Review is conducted 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.

QUESTION 5

- (a) Formal law
- (b) Legal object
- (c) Reception
- (d) Public international law
- (e) Decided
- (f) Subparagrah
- (g) Long title
- (h) Judicial
- (i) Accused
- (j) Court orderly

SECTION B

1.3

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SECTION A

Question 1(a)

- (i) The persons to whom the rules apply.
 - (ii) The sanction for noncompliance with the rules
 - (iii) The person who, or institution that enforces the sanction
- (b) Formal law deals with the procedures that must be followed in legal proceedings. On the other hand substantive law determines the content and the meaning of the legal rules.
- (c) Personal right (object: performance) e.g. a claim
Personality right (object: personality property) e.g. good name
- (d) The connection between the South Africa private law an ownership as areal right is that the law of things recognizes this real right as the most comprehensive right in property.
Ownership may be limited in certain circumstances such as one may not excise his right in such a way that it infringes the right s of other legal subjects.

Question 2

- (a) The reception of Roman law in the Netherlands.
- (b) The writings of Roman – Dutch jurists like Hugo de Groot and Johannes Voet

The Dutch settlement at the Cape

- (c) The civil – law legal family was influences by Roman law whereas the common law legal family's most important characteristic is case law.
- (d) The South African legal system is classified as a mixed system because; it is a mixture of various legal systems such as the Roman – Dutch law. English law and African or indigenous law.

Question 3

(a) (i) Private law because the dispute in question is between an individual and an individual .

(ii) Law of patrimony because it involves persons and their means:

(iii) Law of obligations because both Jane Mothibe and Technicolour Painters had a right to claim performance from each other.

(iv) Law of contract because they agreed that Jane would pay R20 000 and Technicolor painters would paint the house.

Law of delict because Jane has a right to claim compensation for a valuable stature broken by Technicolour Painters.

Question 4

(a) (i) Authoritative and persuasive sources of law.

Examples of authoritative sources are legislation, case law, common law, custom and African Indigenous law.

Examples of persuasive sources are journal articles, textbooks, foreign law, other legal systems, obiter dictum.

(ii) The difference is that authoritative sources of law give weight or power to lawyers' arguments whereas persuasive sources do not bind the court.

(iii) Legislation

(iv) The **ratio decidendi** is important because it is the reason for the court decision and it also binds the lower courts.

Question 5

The constitution is the supreme law of the Republic of South Africa. Everyone, every organization and all law are subject to the constitution. In the past there was parliamentary sovereignty in which parliament could make any law it wanted to no matter how unjust or unfair, as long as the correct procedure was followed.

Courts did not have authority to question such legislation. However under the 1996 constitution, all legislation, or conduct may be challenged in court and changed or removed if it is found to be inconsistent with the Constitution.

(b) Fundamental rights are rights that safeguard democracy and protect the individual from the abuse of state power.

(c) They protect the individual from abuse of state power.

(d) (i) Right to environment that is not harmful.

(ii) Third – generation rights

(iii) Vertical application because it involves the state and a group of people

Question 6

(a) nature of right

Purpose of limitation

Nature and extent of the limitation

The relation between limitation and its purpose.

Less restrictive means to achieve the purpose.

(b) An accused has constitutional rights which must be observed throughout the criminal proceedings. In *SV 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 7

(a) The criminal case will punish Kevin Rich for the negligent driving offence he committed.

The civil case will involve John Smith claiming damages for the damage to the motorbike and medical expenses for his broken collar bone and left leg.

(b) The principle of judicial precedent means the lower courts are bound by the decisions of the higher courts.

The principle of appeal deals with a party or accused who feels that the court has made an error in its decision and appeals to the higher court.

The principle of review involves a case where there has been an irregularity in procedure and the aggrieved party or accused may apply for a review by a higher court.

SECTION B

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14. 4

15. 3

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SECTION A

SECTION A

Question 1 (a)

	To whom are rules applicable	Sanction	Who enforces the sanction
The Law		Prosecution punishment compensation to injured party	State organ State organ
Individual morality	Every individual sets for him or him or herself	Personal self – imposed	Individual

(b)(i) There must be explicit rules.

(ii) The rules must apply generally

The rules must be applied impartially by a legal institution.

(c) (1) a thing

(2) Right to use and sell

(3) Capacity according to legal status

(4) Corresponding duties

(5) Human right

(6) right to a good name

(7) Holder of rights and duties

(8) Trademark

Question 2

- (a) The reception of Roman law in the Netherlands
- (b) (1) Canon Law
(2) Justinian's Corpus Iuris Civilis

Question 2(c)

- (1) Style and technique
 - (2) Philosophy or ideology
 - (3) Economic elements
- (c) (1) Roman – Dutch law
- (2) English law
 - (3) African or indigenous law

Question 3

- (a) (i) Law of patrimony because it concerns persons and their means
- (ii) Law of property because it defined how movable and immovable property can be owned and how one may make use of the property without infringing others.
 - (iii) The right to live in peace and quiet on their properties. The noise amounts to an infringement.

(b)(i) Public international law deals with the relations between states.

(ii) Criminal law defines acts which amount to crimes and the sanctions that are imposed by the state for the commission of these crimes.

Question 4

- (a) The two kinds of sources of law are authoritative and persuasive sources of law.
- (b) Authoritative sources are sources which give authority or carry much weight to lawyers' arguments. Examples of these sources are legislation, case law, common law, custom and African customary law.
- (c) Persuasive sources carry less weight and can be used after the authoritative sources have given no answer required.

(d) These sources have given no answer required.

These sources are persuasive in nature and the following are examples of them ; foreign law, modern legal writes, textbooks, journals and obiter dictum.

(b) (i) Short title i.e. beginning and last section of the Act.

(ii) Long title

(iii) Preamble

(iv) Section 1

Question 5

(a) The Constitutional Court has final say in constitutional matters.

It can change or get rid of legislation made by parliament if the legislation is not consistent with the constitution.

The CC can make application or enforcement of a law invalid if such application or enforcement is inconsistent with the Constitution.

(b)(i) They will be protected with 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 sexual orientation, sex and gender is prohibited. The right to human dignity cannot be alienated at all and must be respected and protected.

(ii) Vertical application

Mr. Chabede in his official capacity as a police represent the state and precious and Beauty are people adversely affected by a member of a state organ.

Question 6

(a) The court will take the following factors into account;

The nature of the right

The importance of the purpose of the limitation.

The nature and extent of the limitation

The relations between the limitation and its purpose.

The less restrictive means to achieve the purpose.

(b) 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 partnership 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 7

(a) (i) Criminal case and civil case

The attack by Peter amounts to an assault which is a criminal and punishable offence under criminal law.

Anna may institute a claim for damages in respect of medical expenses she incurred for head and eye injuries in terms of a civil case.

(ii) Magistrate's court because it has jurisdiction to hear a case of that amount.

(iii) A magistrate and his role are to hear, decide the case and award damages. (b)(i) The Supreme Court of Appeal decision because South Africa follow the precedent system in which the decision of a higher court binds all lower courts. (ii) Confirmed

(iii) Incorrect because on way appeal the court's decision if unhappy about it.

SECTION B

1. 1
2. 3
3. 3
4. 4
5. 4
6. 2
7. 4
8. 4
9. 4
10. 3
11. 3
12. 2

- 13. 4
- 14. 1
- 15. 3

OCT / NOV 2013

Question 1(a)

- Law
- Religious
- Individual morality
- Community moves

(b) They all govern human behavior

(c) Public law and private law

Public law deals with the relationship between state and the individual

Private law deals with the relationship between individuals and individuals.

Question 1 (d)

1. Opposite of a right
2. A servitude
3. Capacity in accordance with legal status
4. Right to own body
5. Content of a right
6. Something with economic value
7. Personal right claim
8. Copy right

Question 2(a)

1. Canon law

2. Corpus iuris civilis

(b) The reception of Roman law in the Netherlands

Question 1(c)

1. Style and technique
2. The philosophy or ideology
3. Economic elements

Question (d)

1. Roman – Dutch law
2. English law
3. African or indigenous law

Question 3 (a)

- (i) Siphon has a personal right. In terms of their agreement Siphon has a right to be paid and Zodwa has a right to delivery of the motor car.
- (ii) Law of obligations because it deals with a legal relationship between two 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.
- (iii) Law of civil procedure because it involves a dispute between individual and individual.

(b) Law of succession is associated with who inherits the deceased's property.

This can be done if the person dies and provides in his will how the property will be dealt with. Provided a person dies without a will at all or without a valid will, intestate succession comes into play.

Question 4(a)

- (i) 5 sources of law which are legislation, case law, common law, customs and African or Indigenous law.
- (ii) They differ in terms of how they are made and their authority they have when interpreted by the courts.
- (iii) Authoritative source
- (iv) Persuasive source
- (v) The supreme Court of Appeal because of the judicial precedent system in which lower courts are bound by the decisions of the higher courts

Question 5

- (a) The constitution is a set of principles which states out the structure and function of government.
- (b) Fundamental rights are rights that safeguard democracy and protect the individual from the abuse of state power.

(c) Question 5(c)

- (i) Right to environment that is not harmful.
- (ii) Third – generation rights which are also called green lights protect a group more than the individual.
- (iii) Vertical application because it involves the state and a group of people.

Question 6(a)

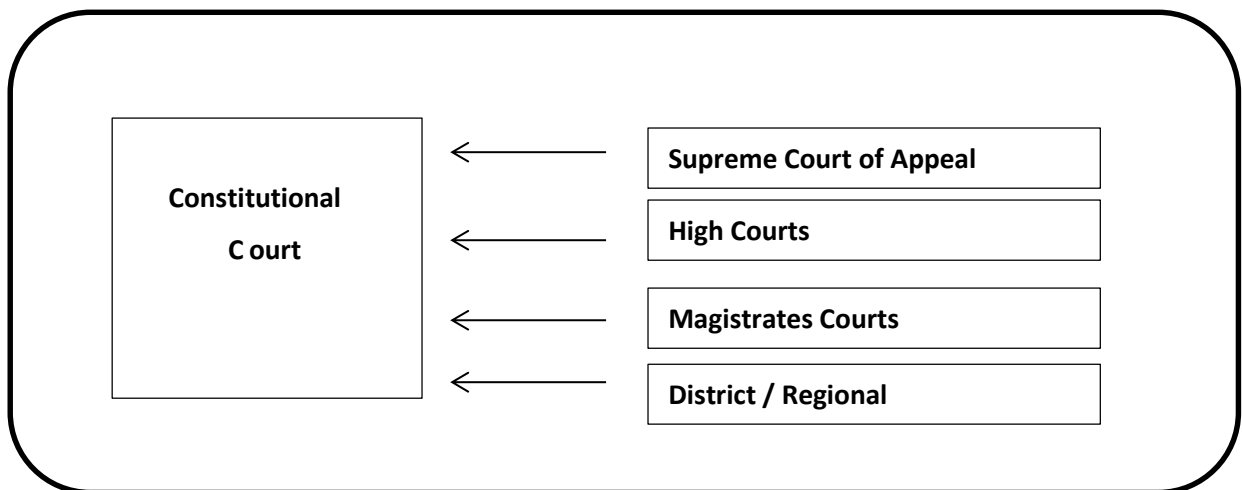
- 1. Nature of right
- 2. Purpose of limitation
- 3. Nature and extent of the limitation
- 4. The relation between the limitation and its purpose
- 5. Less restrictive means to achieve the purpose

Question 6(b)

An accused has constitutional rights which must be observed throughout the criminal proceedings. The constitution is supreme law of the land and any law that is inconsistent with it is invalid to the extent of its inconsistency. 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.

Question 7 (a)



Question 7 (b)

- (i) Public Prosecutor
- (ii) Magistrate
- (iii) Hear and decide the accused's case

- (iv) Prove beyond reasonable doubt and it rest on the state
- (c) Incorrect. The statement is referring to review.

SECTION B

1.	4
2.	2
3.	3
4.	1
5.	3
6.	4
7.	4
8.	1
9.	3
10.	4
11.	3
12.	2
13.	1
14.	2
15.	1

MAY / JUNE 2013

SECTION A

Question 1

(a) Formal and substantive laws

Formal deals with procedures substantive deals with content and meaning of legal rules.

Question 1(b)

1. To whom are the rules applicable
2. What is the sanction for non – compliance
3. Who enforces the sanction

Question 1 (c)

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

Question 2 (a)

1. Roman Dutch law
2. English law
3. African customary law

Question 2(b)

1. Religious legal family
2. Indigenous legal family
3. Hybrid or mixed legal family

Question 2(c)

Hybrid or mixed legal family because it is a mixture of various legal systems such as the Roman Dutch, English and the African or indigenous systems.

Question 3 (a)

- A – Constitutional law
- B – Criminal procedure
- C – Law of personality
- D – Law of things
- E – Law of delict
- F – Labour Law

Question 3(b)

- (i) Right to enjoy their property

The content of a right is limited because the rules of law decide on what the powers of the holder of a right are. A right may also be limited by the rights of other legal subjects.

- (ii) The content of a right is limited because the rules of law decide on what the powers of the holder of a right are. A right may also be limited by the rights of other legal subjects.

- (iii) Law of patrimony.

Question 3 (c)

1. If a person dies without a will.
2. When someone has not left a valid will.

Question 4 (a)

Acts of parliament, provincial (ordinances and municipal by – laws.

- (i) 5 kinds of sources of law which are legislation, case law, common law, custom and African indigenous law.
- (ii) They differ in terms of how they are made and the authority they have.
- (iii) Legislation
- (iv) Authoritative sources
- (v) Reasons for the decision

Question 5 (a)

Legislative which makes the law executive which enforces the law judicial which interprets and decides legal disputes.

(b) Lizelle will be protected in terms of section 17 of the Constitution which provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Question 6 (a)

In terms of section 36(1) of the constitution, a right may be limited only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom. The following factors are taken into account:

- ✓ The nature of the right
- ✓ The importance of the purpose of limitation
- ✓ The nature and extent of the limitation
- ✓ The relation between the limitation and its purpose. the less restrictive means to achieve the purpose.

Question 6 (b)

- (i) Unconstitutional on the grounds of the right to equality and the right to human dignity. (ii) It allows same – sex couples to enter into marriage or a civil partnership.
- (iii) Civil union partners must choose whether they want to call their union a marriage or civil partnership.

(iv) The union has the same consequences which correspond the consequences of a marriage in terms of the Marriage Act 25 of 1961.

Question 7 (a)

- (i) Public prosecutor
- (ii) Court orderly
- (iii) Jurisdiction
- (iv) Long title
- (v) Preamble

(b) In a civil case the parties must prove on a balance of probabilities. On the other hand, in a criminal case, only the state must prove beyond reasonable doubt that the accused is guilty.

SECTION B

- 1. 2
- 2. 2
- 3. 1
- 4. 2
- 5. 2
- 6. 3
- 7. 3
- 8. 2
- 9. 2
- 10. 2
- 11. 2
- 12. 4
- 13. 1
- 14. 1
- 15. 3