



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

FACULTY HUMAN SCIENCES

DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION: BACHELOR OF PUBLIC MANAGEMENT	
QUALIFICATION CODE: 07BPMN	LEVEL: 5
COURSE CODE: LPM521S	COURSE NAME: LAW FOR PUBLIC MANAGERS 1B
SESSION: JANUARY 2019	PAPER: THEORY
DURATION: 3 HOURS	MARKS: 100

SUPPLEMENTARY / SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	MRS H. von ALTEN
MODERATOR:	ADV. M. SAAYMAN

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer ALL the questions.2. Write clearly and neatly.3. Number the answers clearly.4. Students must make sure that chapter 3 of the Namibian Constitution is attached to the script

PERMISSIBLE MATERIALS

1. Examination paper with Chapter 3 of the Namibian Constitution
2. Examination script

THIS QUESTION PAPER CONSISTS OF 4 PAGES (Excluding this front page and chapter 3 of the Namibian Constitution)

QUESTION 1

- a) Government created human rights. Is this statement true or false? Give a reason for your answer. (2)
 - b) Chapter three of the Namibian Constitution is said to be entrenched. What in short is the meaning of the word “entrenched”? (1)
 - c) At what levels are human rights protected? (3)
 - d) What instruments protect human rights at each level? (5)
 - e) What is the main difference between the rule of law and the rechtsstaat principle? (2)
- [13]**

QUESTION 2

On 21 May 2018, Mr //Garoeb was stopped at the road block outside Windhoek. He was unable to produce receipts for the laptop computer and printer he had in his car. Mr //Garoeb informed the Traffic Inspector that he had forgotten the receipts at home and was willing to drive back to fetch them. The Traffic Inspector simply arrested him with the words: “You are a Nama and Nama’s always steal everything”. He was then taken to the Windhoek Police Station, where he was kept in a holding cell. The cell was without any form of sanitation facilities, as these had been demolished by previous prisoners. Mr//Garoeb was given no food for nine days, after which he was released without being charged. Which Human Rights have been infringed? **[12]**

QUESTION 3

Ingrid Katumbu’s son, Silas Shilongo, a grade 5 pupil and 12 years old, was removed from his mother’s home without his mother’s permission and taken to his grandfather’s village to permanently herd and graze the grandfather’s cattle and to assist his grandfather with chores in general around the homestead, leaving Silas no time to attend school. Identify the rights that have been infringed. **[10]**

QUESTION 4

Mr. Sipho, an adult male and a South African National, on holiday in Namibia with his wife, was accused of domestic violence towards his wife and of raping her in their hotel room. At the trial he was not told that he may have representation. Further he requested to see the medical documentation which was in the hands of the prosecution, which proved his violence towards his wife. To this the magistrate answered, that he had no such right, as he was a violent man who must be punished.

- a) Which human rights have been infringed? (5)
- b) Can Sipho's wife be forced to give testimony against her husband? Give a reason for your answer. (3)
- [8]

QUESTION 5

- a) You are confronted with a customary law rule regarding dissolution of a customary marriage and are required to give advice as to the meaning and applicability of the said rule. How will the rules of Interpretation of Statutes assist you to interpret the said rule? (2)
- b) What is the main reason why Interpretation of Statutes changed dramatically after independence? (1)
- [3]

QUESTION 6

- a) Ordinance 4 of 1975 makes it an offence to hunt at night without the permission from the Ministry of Environment and Tourism. Mr Haludilu, the owner of farm Nirvana in the district of Otjiwarongo, after attending a party of a friend, decided to go hunting at midnight. His neighbours, who heard the shots, phone the police in Otjiwarongo, who arrested Mr. Haludilu for hunting at night. In terms of the said Ordinance, the prescribed penalty at the time of the offence was a fine of N\$6,000 or failing payment thereof, imprisonment of 6 months. Due to the fact that night hunting was becoming a problem in Namibia, the Minister of Environment and Tourism, before Mr Haludilu's trial, amends the said Ordinance by notice in the Government Gazette, increasing the said penalty to N\$10,000 or failing payment of the said fine, 12 months' imprisonment. Which penalty will Mr Haludilu receive, should he be found guilty of hunting at night? Give a reason for your answer. (4)
- b) Would your answer in (a) above be different if the said Ordinance is amended before the trial to impose a penalty of N\$3,000 or failing payment of the said fine, 3 months' imprisonment? (3)
- [7]

QUESTION 7

- a) Mr Kalimbo is charged under the Trespass of Donkeys Proclamation 18 of 1941. At his trial, his legal representative argues that the said Proclamation has not been applied since the mid-eighties and as a result, these provisions have been abrogated by disuse. Is the said legal representative technically and legally correct? Give a reason for your answer. (4)
- b) Would your answer be different if Mr Kalimbo had been charged under a common law rule of trespassing? (2)
- [6]

QUESTION 8

Suppose the Labour Act 11 of 2007 is partially repealed by the Labour Amendment Act which now determines that a female employee is entitled to 12 weeks maternity leave after having completed 12 months of continuous service instead of 6 months continuous service as stipulated in Act 11 of 2007. However the Amendment Act has not yet been promulgated. Which Act would apply to Linda who wishes to take maternity leave. Give a reason for your answer. [5]

QUESTION 9

What is the most important principle of statutory interpretation today? Give a reason for your answer. [5]

QUESTION 10

Suppose a legislation requires you to reply to certain allegations within 7 days. The said legislation does not give a definition for the word "days". You receive the letter containing the allegations on the 13th of August 2018.

- a) When will be the last day on which your reply must be handed in? Give a reason for your answer (3)
- b) What would be the last day, if the said legislation required a reply to the allegations within one month? Give a reason for you answer. (5)
- [8]

QUESTION 11

In the language dimension of the interpretation process, certain basic principles must be followed. Explain these principles. [5]

QUESTION 12

It is said that the law making functions of the courts have changed since independence. How and why has this change taken place? [5]

QUESTION 13

When must the courts modify the legislative text and what type of modification will be used under each possibility? [6]

QUESTION 14

Suppose a new Stock Theft Act is promulgated by Parliament which prescribes the imposition of a compensatory fine (i.e. that the victim must be compensated by the accused for the stolen animal) and this in addition to any other penalty for the theft. Mr Kamati stole a sheep from Ms Ndongo and before the trial the said sheep is found and returned to Ms Ndongo. What modifying method and rule will be used to come to the conclusion that Mr Kamati will only receive a penalty and need not pay the compensatory fine? [2]

QUESTION 15

If a provision in legislation, authorises an official or body to exercise a certain power or powers, the question arises whether s/he or it must give effect to the stipulation in the said provision strictly or whether s/he or it has a discretion to adapt the stipulations as the circumstances may from case to case require? How can one arrive at an acceptable answer to this question? [5]

TOTAL MARKS: 100

The Bill of Rights of the Namibian Constitution

CHAPTER 3

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Article 5 Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

Article 6 Protection of Life

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Article 7 Protection of Liberty

No persons shall be deprived of personal liberty except according to procedures established by law.

Article 8 Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable.
- (2)
 - (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
 - (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9 Slavery and Forced Labour

- (1) No persons shall be held in slavery or servitude.
- (2) No persons shall be required to perform forced labour
- (3) For the purposes of this Article. the expression "forced labour" shall not include:
 - (a) any labour required in consequence of a sentence or order of a Court;
 - (b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interests of hygiene;
 - (c) any labour required of members of the defence force, the police force and the prison service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;
 - (d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation;
 - (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Article 10 Equality and Freedom from Discrimination

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 11 Arrest and Detention

- (1) No persons shall be subject to arbitrary arrest or detention.
- (2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.
- (3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer.
- (4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
- (5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety.

Article 12 Fair Trial

- (1)
 - (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.
 - (b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.
 - (c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require.
 - (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.
 - (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
 - (f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no Court shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.
- (2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law: provided that nothing in this Sub-Article shall be construed as changing the provisions of the common law defences of "previous acquittal" and "previous conviction".
- (3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

Article 13 Privacy

(1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

(2) Searches of the person or the homes of individuals shall only be justified:

- (a) where these are authorised by a competent judicial officer;
- (b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied.

Article 14 Family

(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 15 Children's Rights

(1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children as far as possible the right to know and be cared for by their parents.

(2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this Sub-Article children shall be persons under the age of sixteen (16) years.

(3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.

(4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.

(5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

Article 16 Property

(1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

(2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

Article 17 Political Activity

(1) All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and, subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

(2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office, unless otherwise provided herein.

(3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.

Article 18 Administrative Justice

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.

Article 19 Culture

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

Article 20 Education

(1) All persons shall have the right to education.

(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.

(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.

(4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education: provided that:

- (a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration;
- (b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;
- (c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed;
- (d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

Article 21 Fundamental Freedoms

(1) All persons shall have the right to:

- (a) freedom of speech and expression, which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
- (c) freedom to practise any religion and to manifest such practice;
- (d) assemble peaceably and without arms;
- (e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
- (f) withhold their labour without being exposed to criminal penalties;

- (g) move freely through Namibia;
- (h) reside and settle in any part of Namibia;
- (i) leave and return to Namibia;
- (j) practise any profession, or carry on any occupation, trade or business.

(2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Article 22 Limitation upon Fundamental Rights and Freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Article 23 Apartheid and Affirmative Action

(1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.

(2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force, and the prison service.

(3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

Article 24 Derogation

(1) Nothing contained in or done under the authority of Article 26 hereof shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force.

(2) Where any persons are detained by virtue of such authorisation as is referred to in Sub-Article (1) hereof, the following provisions shall apply:

- (a) they shall, as soon as reasonably practicable and in any case not more than five (5) days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them;
- (b) not more than fourteen (14) days after the commencement of their detention, a notification shall be published in the Gazette stating that they have been detained and giving particulars of the provision of law under which their detention is authorised;

- (c) not more than one (1) month after the commencement of their detention and thereafter during their detention at intervals of not more than three (3) months, their cases shall be reviewed by the Advisory Board referred to in Article 26 (5)(c) hereof, which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons;
- (d) they shall be afforded such opportunity for the making of representations as may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons.

(3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21(1)(a) (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners or a Court of law.

Article 25 Enforcement of Fundamental Rights and Freedoms

(1) Save in so far as it may be authorised to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid: provided that:

- (a) competent Court, instead of declaring such law or action to be invalid, shall have the power and the discretion in an appropriate case to allow Parliament, any subordinate legislative authority, or the Executive and the agencies of Government, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it. In such event and until such correction, or until the expiry of the time limit set by the Court, whichever be the shorter, such impugned law or action shall be deemed to be valid;
- (b) any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional. If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law, or allow Parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) hereof shall apply.

(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.

(3) Subject to the provisions of this Constitution, the Court referred to in Sub-Article (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.

(4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.