



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY
FACULTY OF HUMAN SCIENCES**

DEPARTMENT SOCIAL SCIENCES

QUALIFICATION: BACHELOR OF PUBLIC MANAGEMENT	
QUALIFICATION CODE: 07BPMN	LEVEL: 5
COURSE CODE: LPM 521S	COURSE NAME: LAW FOR PUBLIC MANAGERS 1B
SESSION: NOVEMBER 2019	PAPER: THEORY
DURATION: 3 HOURS	MARKS: 100

NOVEMBER 2019 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 excluding chapter 3 of the Namibian Constitution)

QUESTION 1

- a) Most human rights can be limited and suspended in three different ways. Identify them and give examples. (6)
- b) Human rights in the Namibian Constitution are said to be basic and fundamental. What is meant by the words basic and fundamental? (2)
- c) Identify whether the following statements are true or false. Motivate your answer.
- i) The state created human rights. (2)
- ii) It is unconstitutional for the Electoral Commission of Namibia to prevent a 16 year old Namibian from voting in a general election. (2)
- iii) The Rechtsstaat principle has nothing to do with human rights protection. (2)
- [14]**

QUESTION 2

Stanley Shitaleni, a 40 year old man who could only speak Oshiwambo, was arrested and charged in English, for attempting to rape 12 year old Ottilia Nkandi. He was arrested in Ondangwa on the 3rd of January and detained till the 20th of August when he was brought before the Magistrate for the first time for trial. While detained the investigating officer beat Stanley in order to obtain a written admission of guilt, which Stanley gave after several beatings. The Magistrate ordered that the trial be held in secret because of the age of Ottilia. Stanley requested that he be provided with a lawyer appointed by the state, as he could not afford to pay for the services of a private lawyer. This request was refused by the Magistrate with the words, "the child that you raped was 12 years old, therefore we will not provide you with an attorney." At the start of the trial Stanley informed the magistrate that he could not speak nor understand English and requested an interpreter. This request was also refused. Furthermore the admission of guilt mentioned above was handed to the Magistrate as evidence of Stanley's guilt. Identify the human rights that have been infringed. **[13]**

QUESTION 3

Mr. Amutenya is brought to trial for defrauding the First National Bank in the amount of N\$100,000.00. Mrs Sheimi, who is Mr. Amutenya's common law wife, is subpoenaed to appear as a witness to testify as to how she assisted her husband in committing the said offense. At the said trial, she objects to testifying, but is compelled to do so by the presiding Magistrate who threatens to send her to prison for obstructing the administration of justice. Which rights have been infringed? **[3]**

QUESTION 4

- a) Explain, with regard to the relationship between legislation and common law, what happens when legislation contradicts the common law and the said legislation is later repealed. (5)
- b) Distinguish between repeal and invalidation of legislation. (4)
- [9]

QUESTION 5

- (a) In terms of Ordinance 6 of 2006 it is an offence to fish in the Zambezi River during the month of December without the permission from the Ministry of Fisheries and Marine Resources. However, Mr. Jamal Erdogan, the owner of a local fish processing company, decided to go fishing in the Zambezi River during the closed season of December and decided to do so by tossing dynamite in the water. Local fisheries inspectors heard the loud explosions and phoned the police in Katima Mulilo. Mr. Erdogan was swiftly arrested for illegal fishing during the closed season. In terms of the said Ordinance, the prescribed penalty at the time of the offence was a fine of N\$ 9000 or failing payment thereof, imprisonment of 12 months. As a result of the fact that illegal fishing had become a big problem in the Zambezi Region, the Minister of Fisheries and Marine Resources, before Mr. Erdogan'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, 18 months imprisonment. Which penalty will Mr. Erdogan receive should he be found guilty of fishing in the closed season? Give a reason for your answer. (4)
- (b) Would your answer in (a) be different if the said Ordinance is amended before the trial to impose a penalty of N\$ 4000 or failing payment of the said fine, 6 months imprisonment? Explain. (4)
- [8]

QUESTION 6

- a) Suppose a certain provision in a legislation indicates that only men may be employed in a certain field and there is no acceptable reason for this and thus it is unconstitutional as it is discriminatory. Instead of declaring the whole legislation unconstitutional, what options will the court have to keep the legislation "alive"? (8)
- b) Which court of the first instance will apply the constitutional interpretation as required in (a) above? (1)
- [9]

QUESTION 7

Suppose the Child Care Act is repealed in total by the Children's Act. However the Domestic Violence Act makes reference to the repealed Child Care Act. Will the Child Care Act remain "alive" for the purposes of the Domestic Violence Act? Briefly explain. [5]

QUESTION 8

On the 2nd of June 2018 Mr Mulunga was arrested and charge for being in possession of 10 grams of marijuana. On the 17th of August 2018 the law was changed, making it legal to possess 15 grams of marijuana. Mr Mulunga was brought to trial on the 10th of September 2018 when his legal representative requested that the charges are to be dropped as it is no longer a crime to be in possession of 10 grams of marijuana. Discuss in terms of the relevant legislation whether the charges can be dropped. [5]

QUESTION 9

It is said that when reading the text of the legislation for the first time, certain initial rules must be adhered to. Which one of the rules would be used in the following circumstances to forbid the use of cell phones as well?

Suppose a certain regulation dating back to 1980 states that no telephones may be used in the Parliament building while Parliament is in session. [3]

QUESTION 10

a) Suppose certain insurance regulations state that any claim for any loss or damage to property must be handed in within 7 days after the said loss or damage occurred. Mr. Sibela loses his expensive camera on the 5th of September 2018. He hands in his claim on the 13th of September 2018. The said insurance company rejects the said claim. Is the said insurance company correct in rejecting the said claim? Give a reason for your answer. (4)

b) Suppose Mr. Sibela is given one month to hand in his claim, and he hands in his claim on the 4th of October 2018. Explain whether he has handed in his claim timeously. (5)

[9]

QUESTION 11

Suppose a regulation of the hostels at the Namibia University of Science and Technology (NUST) prohibits any person of the opposite sex to stay the night in the same room. Further, that any visitors to the said hostels have to be out of the rooms before 22:00 during the week and 0:00 over week-ends. However, the said regulations have not made any provisions for a consequence should the prohibition be ignored. Mr. Sapato, who lives in the hostel is caught with his girl friend in his hostel room at 6:00 one morning and it is obvious that she had spent the night with him. At a disciplinary hearing Mr. Sapato is evicted from the hostel. He appeals

the decision on the ground that the said regulation does not cater for an eviction. What common law rule will NUST use to defend their eviction. [4]

QUESTION 12

How and why has the law making function of the courts changed since independence? [5]

QUESTION 13

- a) When must the courts modify the legislative text and what type of modification will be used in each possibility? (6)
- b) Suppose the Prohibition of Dependence Forming Substances and Rehabilitation Institutions Act states that if a minor child is proven to be addicted to a drug such as speed, the said child will be institutionalised to cure the said child of such dependency and the parents/guardian of the said child so institutionalised will pay all the expenses of this said institutionalisation. Ingrid, the minor child of Mr. and Mrs. Katumbu is proven to be addicted to heroin and institutionalised. The said institution in which she is placed in terms of the above mentioned Act, sends the accounts for all the costs incurred for Ingrid to Mr. and Mrs. Katumbu. A year later, Ingrid is cured of her addiction and leaves the said institution. However the said institution continues to send accounts to the Katumbas' who refuse to pay. Should this action be taken to court, which method of interpretation and rule will be applied by the court supporting non-payment of any further accounts. (2)
- [8]

QUESTION 14

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