



SCHOOL OF LAW

NLLB 515 INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER/DECEMBER 2023

LECTURER: MR N MAPHOSA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

- 1. Do NOT write your name on the answer sheet.**
2. Write legibly.
3. Students **MAY NOT** take any material into the examination.
- 4. Answer ALL questions from Section A and FOUR questions from Section B.**
5. You are advised to read all questions carefully before attempting to answer any.
- 6. Begin your answer for each question on a new page.**
- 7. Refer to RELEVANT authorities to support your arguments.**
- 8. This examination paper consists of five pages.**

SECTION A

THIS SECTION IS COMPULSORY

QUESTION ONE

Explain the following terms:

- a) Information and Communications Technology Law. **[5 Marks]**
- b) Leapfrogging. **[5 Marks]**
- c) Media Law. **[5 Marks]**
- d) Disinformation. **[5 Marks]**

SECTION B

ANSWER FOUR QUESTIONS FROM THIS SECTION

QUESTION TWO

Explain the terms “personal information” and “sensitive data” and tabulate their constituent elements as enunciated in section 3 of the Cyber and Data Protection Act [Chapter 12:07].

[20 Marks]

QUESTION THREE

Write a brief description of each of the following five principles of democratic broadcasting regulation:

- a) How national frameworks for the regulation of broadcasting must be set down in law. **[5 Marks]**
- b) Independent regulation of broadcasting. **[5 Marks]**
- c) A pluralistic broadcasting environment with a three-tier system for broadcasting: public, commercial and community. **[5 Marks]**

d) Public as opposed to state broadcasting service.

[5 Marks]

e) Universal access to broadcasting services, equitable access to signal distribution and other infrastructure.

[5 Marks]

QUESTION FOUR

Assume you are an Information and Communications Technology Law expert. Your client, the Law Society of Zimbabwe (hereafter the Applicant or Law Society) has approached you seeking advice.

The President of the Law Society tells you that the Applicant is a regulatory body established in terms of an Act of Parliament. He further instructs you that he intends to institute legal proceedings in terms of section 85 of the Constitution of Zimbabwe Amendment No.20 of 2013 (hereafter the 2013 Zimbabwean Constitution). He contends that, in terms of s 85 of the 2013 Zimbabwean Constitution an applicant is entitled to approach this Court directly on the basis that his or her fundamental rights have been, is, or is about to be, violated. The applicant represents several practising legal practitioners. Furthermore, the applicant's case is that its members' right to freedom of expression as enshrined in s 61 of the Constitution is threatened by the provisions of s 98 (2) and s 103 of the Postal and Telecommunications Act [Chapter 12:05] (the Act). Thus, the applicant seeks an order declaring sections 98(2) and 103 of the Act invalid and of no legal force or effect because they are inconsistent with the Constitution.

It is the applicant's case that its members, legal practitioners, are in law entitled to free and unhindered communication between themselves and their clients and amongst each other. The applicant contends that the privileged status of legal communications between legal practitioners and clients goes beyond the general protection to all persons by the Constitution. The privileged status of lawyer-client communication is time honoured and enshrined in common law and in s 8 of the Civil Evidence Act [Chapter 8:01]. The applicant contends that legal practitioners receive from their clients, private, personal and confidential information. Their clients must of necessity disclose to them information that has not yet been made public or which is of a private and confidential nature and should not be disclosed to the public. In order for legal practitioners to advise their clients effectively they must receive full information and instructions from their clients. Often the dissemination of such information to third parties or the public would cause potential or actual loss, harm and/or prejudice to clients. It is for the protection of clients that the legal privilege accorded to legal practitioner and client communication is recognised and enforced by law.

Your attention is drawn to subsection (2) of s 98 of the Postal and Telecommunications Act which allows the President to give a direction that postal articles shall be intercepted and detained. The Act defines postal services in very broad terms and the Act does not impose any restriction on the manner in which, or the persons by whom, such interception or detention may be effected. In terms of the Act, the President is allowed to give a direction that any article shall be delivered to an employee of the State to be disposed of in such a manner as the President may direct. The Act allows the President to give a direction that communications shall be intercepted or monitored. The President may give any of the directions referred to above if, in his opinion, it is necessary in the interests of national security or the maintenance of law and order.

Additionally, s 103 of the Act similarly allows the President to give such directions to any licensee as appears to him to be requisite or expedient in the interests of national security or relations with the Government of a country or territory outside Zimbabwe. Section 61 of the Constitution expressly provides that no person shall be hindered in the enjoyment of his freedom of expression which includes freedom from interference with correspondence. S 61 of the Constitution also provides for the derogation of the freedom of expression if it is necessary to do so but also enjoins that such derogation must be reasonably justifiable in a democratic society.

The applicant argues that:

- 1) The impugned sections of the Postal and Telecommunications Act do not fall within any of the exceptions permissible under s 61 of the Constitution; and
- 2) The applicant contends that even if the impugned sections fall within the exceptions set out in s 61 of the Constitution they are too vague to satisfy the requirement as provided by law and are not reasonably justifiable in a democratic society.

The converse argument is that sections 98(2) and 103 of the Act are a derogation on the guaranteed freedom of expression. Specifically, the contention is that these provisions fall within the permissible exceptions under s 61 of the Constitution, and are reasonably justifiable in a democratic society, and therefore constitutional.

The President of the Law Society would like to know whether sections 98(2) and 103 of the Postal and Telecommunications Act are consistent with s 61 of the Constitution. Specifically, his view is that, in general terms, the matter pertains to the interception of communications, but more specifically relates to interference with lawyer-client privilege which would result from the interception of mail and telecommunications between a lawyer and his client. The concern of the Applicant is that the right of the State to intercept communications in terms of sections 98 and 103 of the Act puts at risk the privilege of such communication and thus constitutes an interference with the constitutional rights of both the lawyer and the client in terms of s 61 of the Constitution. Importantly, the President of the Law Society is adamant that sections 98 and 103 of the Act place

at risk the confidentiality of the communications and therefore, demonstrably negate the privilege that is granted to those communications.

Assume for purposes of this question that the impugned provisions of the Postal and Telecommunications Act cited above have not been repealed by the Legislature nor annulled by a court of law.

Advise the Law Society fully citing relevant authorities to support your averments. **[20 Marks]**

QUESTION FIVE

I. Explain the functions of the Zimbabwe Media Commission as contained in the Constitution of Zimbabwe Amendment (No. 20) Act, 2013. **[10 Marks]**

II. State the functions of the Data Protection Authority (i.e. the Postal and Telecommunication Regulatory Authority of Zimbabwe-POTRAZ) in terms of the Cyber and Data Protection Act [Chapter 12:07] **[10 Marks]**

TOTAL MARKS:

100

END OF EXAMINATION PAPER