

Feedback Constitutional Law 312 Applied Assignment 2017 Application B

The Applied Writing Assignment aims to achieve several of the substantive and generic learning outcomes posited for Constitutional Law 312. Some of the relevant substantive learning outcomes include:

- The ability to read, analyse and critically evaluate South African constitutional jurisprudence and legislation relevant to particular human rights.
- The ability to identify the relevant human rights principles and jurisprudence applicable to a given set of facts or problem.
- The ability to apply the relevant rules, principles and jurisprudence to a given set of facts in order to formulate appropriate constitutional arguments.

Furthermore, relevant generic outcomes include:

- The acquisition of sound legal research and writing skills in the context of human rights law.
- The ability to identify and apply relevant research materials to solve specific human rights problems.
- Sound organisation and analysis of material.
- The ability to develop and communicate clear, logical arguments using the accepted methods of constitutional reasoning.
- The ability to apply writing style and referencing guidelines accurately

It should be borne in mind that no independent research was required for the Heads of Argument. The identification and application of “research materials” thus refer to relevant prescribed and recommended sources, especially jurisprudence.

Content of assignment (60)

In order to make convincing legal arguments for purposes of Application B, you must focus primarily on relevant case law in conjunction with legislation. You should thus

analyse case law to the extent relevant, and apply the law to the facts systematically. Repetition of facts and extensive quotation of legislation and regulations detract from the space you have available to make convincing legal arguments!

The logical point of departure for Application B should be reading “basic sanitation” into the constitutional right of access to sufficient water (section 27(1)(b) of the Constitution). Only if this is argued, can the Constitutional Court’s reasonableness review be used to interpret the Water Services Act and be applied to City’s sanitation programme.

Thereafter, each component of reasonableness review should be analysed and applied to the facts. First, what is the nature of reasonableness review according to the Constitutional Court in *Grootboom*? What are the criteria for a reasonable State programme – which criteria are relevant on these facts? Thereafter, you should analyse “progressive realisation” in terms of *Grootboom* and *Mazibuko*, respectively. This should then be applied to the case study in that expenditure has decreased annually and the City’s policy has not been revised. Next, you should analyse “within available resources” with reference to *Grootboom*. What are the implications of the small percentage allocated to sanitation in informal settlements and the evidence that outsourcing is the most expensive manner of sanitation provision?

Many of you formulated legally persuasive arguments regarding the minimum standard for sanitation established by Regulation 2, with reference to *Mazibuko*. As per *Mazibuko*, this standard helps to hold government accountable. According to *Grootboom* and *TAC*, minimum standards may also be considered to determine the reasonableness of the State’s conduct.

It is of cardinal importance that your arguments are legal in nature. This requires that every argument is supported by appropriate legal authority, namely relevant case law. You should thus demonstrate that you read the case law and understood it. This should be apparent from in-depth case analyses (accompanied by references to paragraphs in the case law). Proper legal analysis will substantiate your arguments and render them (legally) convincing.

Structure of the assignment (10)

If you submitted an essay, your structure is wholly insufficient and you failed to comply with the core requirement of this assignment.

The structure of your argument will influence whether your legal argument is ultimately convincing or not. It is suggested that you use headings that reflect the logical progression of your argument. Your headings should thus address the main legal principles as discussed above, for example:

1 Introduction

2 Legal Framework

3 Argument

3 1 Content of the right of access to sufficient water

3 2 Reasonableness review

3 2 1 *The nature of reasonableness review*

3 2 2 *Criteria for a reasonable State programme*

3 2 3 *Progressive realisation*

3 2 4 *Within available resources*

4 Remedies

5 Conclusion

Style, tone and language (10)

You should use terminology as it is used in the Constitution and case law, for example “reasonableness review”. Be precise when referring to the language of the Constitution and ensure that any quotations correspond exactly to the original.

Heads of Argument require formal language. An appropriate register should thus be maintained: For example, do not contract words like “don’t” for “do not”. Also try to avoid emotive language or expressions.

Do not repeat facts or arguments, and do not quote all relevant provisions in full in the main text of your Heads of Argument.

Always use South African English, and use South African English: For example, it is “realisation” and not “realization”; “judgment” and not “judgement”.

For those writing in English, distinguish between the use of “is” for singular (for example, “ one of the criteria is”) and “are” for plural (for example, “the criteria are”) and between the possessive apostrophe (“the state’s policy”) and plural (“many states have adopted policies”)

When referring to a statute, it is ‘Act’ not ‘act’.

You should refer to ‘the Constitution’, but in lower case when referring, for example, to ‘constitutional rights’.

Case names should be italicised throughout (including abbreviated case names e.g. *Grootboom*).

Create abbreviations properly as per the Law Faculty Writing Guide, including for abbreviated case names such as *Grootboom* and *Mazibuko*.

Referencing (15)

For Heads of Argument, it is crucial to refer to case law in order to convince a judge of the legal merits and authority of your argument. You can refer to secondary sources like academic commentary in addition to referring to case law. Heads of Argument that refer only to secondary sources will likely not be convincing on legal grounds/grounds supported by legal authority. When referring to case law, it is essential to refer to specific paragraphs. This shows the judge where exactly the authority for your argument can be found. It shows the lecturer that you actually read the judgment.

Technical presentation (5)

Leaving “track changes” or comments from the writing consultants in your submitted assignment creates a very bad first impression.

Inappropriate use of capital letters also makes a bad impression. For example, it is “human dignity” and not “Human dignity”; it is “reasonableness review” and not “Reasonableness Review”, “socio-economic rights” and not “Socio-Economic rights”, etc.

Uneven line spacing, odd gaps in your text, and between text and punctuation marks looks unprofessional.

Always carefully proofread your assignment (or Heads of Argument in practice) several times before submitting it!