

SOUTH AFRICAN



NATIONAL SCHOOLS Moot Court Competition

7th National Schools Moot Court Competition

The 8 Finalists in the National Oral Round will stand a chance to represent South Africa in The Hague at the International Moot Competition in January 2018

All secondary schools in South Africa are invited to enter a team of two learners.

Teams are provided with the facts of a fictitious case which involves human rights issues under the South African Constitution. Teams are expected to write 2 short essays defending opposite sides of the case. The teams with the highest scores for their essays from each province will be invited to argue the case in an oral round before judges in a real court scenario.

The Final Oral Round is hosted in the Constitutional Court in Johannesburg!

The winners of the Final Oral Round will receive financial support toward their first year of study should they choose to study law at any South African university, to which they have been admitted.

All lawyers - attorneys, advocate, law students, prosecutors, law lecturers, magistrates and judges - are also invited to join the growing number of lawyers who open their doors and assist learners and schools who wish to participate.



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NATIONAL SCHOOLS
Moot Court Competition

HYPOTHETICAL CASE AND RESOURCE PACK
16 JANUARY 2017
WWW.SCHOOLSMOOT.CO.ZA

2017 HYPOTHETICAL CASE TO BE ARGUED
NATIONAL SCHOOLS MOOT COURT COMPETITION

1. Jan Smuts High School is a well-resourced school on Jan Smuts Drive in Johannesburg. The school was built in 1948 in honour of General Jan Christiaan Smuts with grand sixteenth-century Elizabethan style architecture (similar to Burghley House), and a statue of him is displayed in the front yard. Since 1994 the demographics have gradually changed: 55% of the learners are white and Afrikaans-speaking, 2% are of Asian origin and 3% are coloured. The rest of the learners are African, with isiZulu as the dominant indigenous language. The majority of the community on and around Jan Smuts Drive are Zulu speaking.
2. In December 2016 Sanele and Anele Nkosi, along with their daughter Zanele Nkosi, moved into a house on Jan Smuts Road in Johannesburg. In January 2017, Zanele Nkosi was enrolled at the Jan Smuts High School where she would complete her Matric year. Her parents were presented with the school's Code of Conduct and they were very happy that Zanele would be enrolled in such a good reputable school that observed the Christian religious practices.
3. On the first day of school, however, Zanele was informed that she must straighten her hair to look neater, as required by section 34 of the school's Code of Conduct. Zanele had a head full of rich, natural dreadlocks that she had been growing since she was a child. She took very good care to keep her dreadlocks clean and presentable. In an attempt to comply with section 34 of the Code of Conduct, Zanele started wearing her dreadlocks in a ponytail. However, she was asked to report to the headmaster's office where she was reminded that section 34 of the code of conduct provides that dreadlocks will not be allowed unless they are for religious reasons.
4. On the 22nd of March 2017, the first quarterly parent-teacher conference was convened where teachers, the school's governing body (SGB), the Representative Council of Learners (RCL) and the parents would meet. At the end of the meeting, Thandiwe Zuma, the chairperson of the RCL made a proposal on behalf of the community and the learners.
5. The proposal was that the school's name be changed from Jan Smuts High School to Shaka Zulu High School, since a large number of the learners, as well as the community around the school spoke isiZulu and were of Zulu descent. "If we're going to succeed with decolonising the school, we must start with the name!" She further argued that the normalised stigmatisation of heroes of our struggle for justice, peace and freedom must be a thing of the past. The headmaster immediately rejected this proposal because the "old name is a historical treasure and a heritage so intimate to the very being of many learners of the school".
6. In the months that followed, Zanele spent a lot of time in detention class for contravening section 34 the Code of Conduct with her dreadlocks. On 13th July 2017, during a formal disciplinary hearing, the SGB made a decision to suspend Zanele for continuous contravention of section 34 of the Code of Conduct. Although the proper procedures were followed, Zanele

argued that as an African woman she should be allowed to wear her natural hair the way she pleases. At the same hearing, the SGB formally rejected Thandiwe's proposal to have the name of the school changed to Shaka Zulu High School.

7. Zanele's neighbour Mr Dlamini, a lawyer, decided to help Zanele and took the SGB's decision on review to the High Court. After hearing about this, Thandiwe, who is also Mr Dlamini's neighbour, asked to be joined in the proceedings.
8. The High Court held that since Zanele was a Christian and not a Rastafarian, she is not entitled to wear dreadlocks to school in contravention of section 34 of the Code of Conduct. The High Court further held that the renaming of school to Shaka Zulu High School would constitute an infringement of the white learners' right to enjoy their culture as envisaged by section 31 of the Constitution.
9. Zanele and Thandiwe applied for leave to appeal to the Supreme Court of Appeal, but leave was refused. Thereafter, they asked for leave to appeal the decision of the High Court to the Constitutional Court. Leave was granted and the appeal is set down for hearing in October 2017.
10. Section 34 of the Jan Smuts High School provides that:
"Girls' hair must be kept neat and flat and must be tied in a ponytail at all times. Dreadlocks will only be allowed for cultural or religious reasons."

The Appellants (Zanele and Thandiwe) must argue that:

1. The application of section 34 of the Code of Conduct violates the Constitution, and Zanele must be allowed to wear her natural hair as she pleases.
2. The refusal to rename Jan Smuts High School to Shaka Zulu High School is in contravention of the Constitution, specifically section 31 of the Constitution.

The Respondent (the SGB of Jan Smuts High School) must argue:

1. The application of section 34 of the Code of Conduct does not violate the Constitution since Zanele's dreadlocks are not for religious purposes.
2. Renaming Jan Smuts High School to Shaka Zulu High School is in contravention of the Constitution, specifically section 31 of the Constitution.

RESOURCE PACK

I. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

Preamble

We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.

... Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations...

Section 9: Equality

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) ...
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) ...

Section 10: Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

Section 16: Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes—
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.

Section 18: Freedom of association

Everyone has the right to freedom of association.

Section 30: Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Section 31: Cultural, religious and linguistic communities

(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community—

(a) to enjoy their culture, practise their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Section 36: Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

II. CASE LAW

Islamic Unity Convention v Independent Broadcasting Authority and Others 2002 @ para 30

“The right to freedom of expression is accordingly not absolute; it is, like other rights, subject to limitation under section 36(1) of the Constitution. Determining its parameters in any given case is therefore important, particularly where its exercise might intersect with other interests.”

MEC for Education, KwaZulu-Natal and Others v Pillay 2008 (1) SA 474 (CC)

“Rules are important to education. Not only do they promote an important sense of discipline in children, they prepare them for the real world which contains even more rules than the schoolyard. Schools belong to the communities they serve and that ownership implies a responsibility not only to make rules that fit the community, but also to abide by those rules. Nothing in this judgment should be interpreted as encouraging or condoning the breaking of school rules.”

South African National Defence Union v Minister of Defence and Another 1999 (4) SA 469 (CC) at para 7

“Freedom of Expression. . . lies at the heart of a democracy. It is valuable for many reasons, including its instrumental functions as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally.”

City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19 at paragraph 12

“South Africa still looks very much like Europe away from Europe. A very insignificant number of names of our cities, towns and streets gives recognition to the indigenous people of this country and other black people. Very little recognition or honour is given to their heritage, history, heroes and heroines in their own motherland. This does not reflect but rather belies a commitment by all to the spirit of genuine unity, transformation and reconciliation.”

City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19 @ paragraph 4

“...Almost all cities, towns and street names continue to reverberate with great sounds of veneration for the architects of apartheid, heroes and heroines of our oppressive and shameful colonial past. Virtually no progressive or potentially conciliatory change to city, town or street names goes unchallenged. There are fairly regular challenges to the equitable distribution of honour to heroes of all cultural or racial groups and a concomitant determination to preserve exclusivity to privilege and meaningful control. This highlights the crucial role of the Preamble to our Constitution, relied on by Afriforum.”

City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19 @ paragraph 7& 8

“Just as important is the need to respect white and black South Africans who played a crucial role in building and developing South Africa into the modern country of note it now is. All of us must embrace and internalise the constitutional reality that this country belongs to all of us who live in it. Diversity thus ought to highlight the need for unity rather than reinforce the inclination to stand aloof and be separatist....

... This is to be done sensitively and in pursuit of inclusivity, unity in diversity and recognition of the need for a sense of belonging for all."

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
at paragraph @27**

"...The old street names are an historical treasure and a heritage so intimate to the very being of the Afrikaner people that their removal would constitute an infringement of their right to enjoy their culture as envisaged by section 31 of the Constitution.

... they are an integral part of an irreplaceable and much-cherished history, heritage and culture of the Afrikaner people. So dear and invaluable are the old street names to them, that even their temporary displacement would not only give rise to inestimable emotional hurt but also to irreparable harm"

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph @28**

"Furthermore, confusion would reign consequent upon the placement of only new names since tourists, residents and business people would find it difficult to locate their destinations pending the drafting of new directional maps with new street names or updating the GPS. Business people would also have to change their stationery at great expense and if the review succeeds change it back to what it was."

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph 63, 64 & 64**

"... The removal of the old street names would deny them a sense of belonging and weaken their case on review. It must be said though that this must be counter-balanced against another reality of great historical and constitutional consequence. And that is that Pretoria is the capital city of South Africa. Pretoria does not belong only to the Afrikaners or white South Africans. It equally belongs to all of our people white and black, united in their diversity. All racial groups in this country deserve to have their culture, heritage, history, heroes and heroines respected and honoured by all...

...The emotional harm ... is grounded on a one-sided notion of a sense of belonging. The significance of a change of 25 old street names, out of the many that lauds their heritage, must be taken into account. This is necessary because it also gives some sense of belonging to the previously disadvantaged South Africans who are the overwhelming majority of the citizens of Pretoria and South Africa.

The Preamble to our Constitution cannot therefore be legitimately relied on to perpetuate the exclusion of others from respect and honour. And it is thus ironic that Afriforum seeks reliance on this Preamble in the furtherance of the interests of essentially one racial group to the exclusion of all others, even freedom fighters.”

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph @123**

“...And we think it would be better for white Afrikaans people, and indeed everyone else, to find their sense of place and belonging, not only in the past, but also in a shared future, one the Constitution nurtures and guards for all of us, together, united in our diversity. But does that entitle us to say that Afriforum members’ sense of belonging, place and loss is not real and that it should not also be recognised under the Constitution? The answer is No.”

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph @126**

“In asserting their right to a sense of belonging and place based on historical affinity to Pretoria, Afriforum’s members have done no wrong. They have committed no crime. The Preamble to the Constitution states that South Africa belongs to all who live in it, united indeed, but “in our diversity”. Indeed, recognising and preserving cultural rights is important in our constitutional society. This helps ensure that minorities, including cultural, linguistic or ethnic minorities, feel included and protected. This is not only to safeguard their interests. It is to preserve cultural diversity that is of value to the country’s identity. Cultural rights, whether of the Islamic community, the VhaVenda, or seTswana speakers, are integral to a sense of identity, self-worth and dignity.”

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph 131 and 132**

“Does it entail that, as a general proposition, white Afrikaner people and white South Africans have no cultural rights that pre-date 1994, unless they can be shown not to be rooted in oppression? How must that be done? Must all organisations with white South Africans or Afrikaners as members now have to demonstrate that they have no historical roots in our oppressive past? Who decides that, and on what standard?

This will be of concern not only to white South Africans, or to Afrikaners. It may also be of concern to those who take pride in the achievements of King Shaka Zulu, despite the

controversy about his reign, and those who nurture the memory of Mahatma Gandhi's struggles in South Africa, despite some repugnant statements about black Africans. Our country has a rich and complex history. It has meaning for each of us, in diverse ways, which the Constitution accommodates and respects. The complexities of history cannot be wiped away, and the Constitution does not ask that we do so."

City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19

@ paragraph @159

"...But recognition and tolerance of difference, even radical difference, is what, in our view, the Constitution demands of us. It is not consonant with the values of the Constitution to deny constitutional protections to people because of the content of their beliefs, views and aspirations."

Minister of Home Affairs and Another v Fourie and Another [2005] ZACC 19 at paragraph 60

"Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgment and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society. . . . At issue is a need to affirm the very character of our society as one based on tolerance and mutual respect. The test of tolerance is not how one finds space for people with whom, and practices with which, one feels comfortable, but how one accommodates the expression of what is discomfiting."

Mpumalanga v Executive Committee, Association of State-Aided Schools, Eastern Transvaal [1998] ZACC 20 @ paragraph 1.

"... there are a number of constitutional provisions that underline the constitutional value of acknowledging diversity and pluralism in our society, and give a particular texture to the broadly phrased right to freedom of association contained in section 18. Taken together, they affirm the right of people to self-expression without being forced to subordinate themselves to the cultural and religious norms of others, and highlight the importance of individuals and communities being able to enjoy what has been called the 'right to be different'. In each case, space has been found for members of communities to depart from a majoritarian norm."

S v Makwanyane and Another [1995] ZACC 3 at para 262.

“The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic.”

President of the Republic of South Africa and Another v Hugo [1997] ZACC 4 at paragraph 41.

“The prohibition on unfair discrimination in the interim Constitution seeks not only to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups. The achievement of such a society in the context of our deeply inegalitarian past will not be easy, but that that is the goal of the Constitution should not be forgotten or overlooked.”

**City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19
@ paragraph**

“Moreover, an examination of sections 30 and 31 of the Constitution does not support the right to a sense of belonging to the place where one lives which is rooted in its particular history. These sections guarantee specific rights. Section 30 guarantees the right to participate in the cultural life of one’s choice. Whereas section 31 entrenches the associational right of persons belonging to a cultural community to enjoy their culture. But both sections create internal limitations to the exercise of each of these rights. These rights may not be enjoyed or exercised “in a manner inconsistent with any provision of the Bill of Rights”. This means that these rights may not be exercised in a manner that discriminates unfairly or demeans the dignity of other people. That is why racist and oppressive cultural traditions have no place in our constitutional order, even though they may exist in history. In contrast, such traditions belong in the dust-bins of history where they ought to be buried.”

III. OTHER

The Guidelines for Consideration of Governing Bodies in Adopting a Code of Conduct – Section 4.5.1

“Freedom of expression is more than freedom of speech. The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, learners’ rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited as the disruption of schools is unacceptable.”

“I am an African”

Speech in Parliament at the adoption of the Constitution, then Deputy President Mbeki included these people and features of history:

“I am an African.

...

I am formed of the migrants who left Europe to find a new home on our native land. Whatever their own actions, they remain still, part of me.

...

I am the grandchild who lays fresh flowers on the Boer graves at St Helena and the Bahamas, who sees in the mind’s eye and suffers the suffering of a simple peasant folk, death, concentration camps, destroyed homesteads, a dream in ruins.

...

I am he who made it possible to trade in the world markets in diamonds, in gold, in the same food for which my stomach yearns...”

[For the full version see

<http://www.unisa.ac.za/default.asp?Cmd=ViewContent&ContentID=25146>]

Example ScoreSheet
7TH NATIONAL SCHOOLS MOOT COURT COMPETITION
ORAL SCORING SHEET
APPLICANT'S RESPONDENT'S

(Applicant) _____ V _____ (Respondent)

ORALIST 1 - SURNAME		ROUND	SESSION	ORALIST 2 - SURNAME	
Highest possible score	Score given	INDICATORS		Score given	Highest possible score
25		<ul style="list-style-type: none"> • Knowledge of the facts • Correct and articulate analysis of the issues 			25
25		<ul style="list-style-type: none"> • Familiarity with Constitutional Law authorities • Basic knowledge of substance and process of Constitutional Law • Knowledge of legal principles directly applicable to the facts 			25
25		<ul style="list-style-type: none"> • Organisation • Clarity 			25
25		<ul style="list-style-type: none"> • Response to questions • Ingenuity • Persuasiveness 			25
100%					100%

I found the presentation of oralist one to be:

I found the presentation of oralist 2 to be:

Name of Judge

Signature

SCORING GUIDE

Outstanding	90% - 100%	Average	50% - 59%
Excellent	80% - 89%	Poor	40% - 49%
Very good	70% - 79%	Below minimum standard expected	0% - 39%
Good	60% - 69%		