Tutorial letter 102/3/2017

Education Law and Professional Ethics

EDA3058

Semesters 1 & 2

Department of Educational Leadership and Management

Define tomorrow.

UNISA university of south africa

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Dear Student

Please note that this tutorial letter relates to the Only Study Guide for EDA3058. It is important for you to study this tutorial letter very carefully because it contains information on the tutorial matter and memorandums of activities and self-evaluation questions included in your study guide. The objective is to motivate you to work through the study guide, do all the activities and self-evaluation questions and then assess your own work, because by doing so you are actively learning. It is suggested that you work through the Study Guide, study unit by study unit. After you have worked through a study unit, do the activities and self-evaluation questions and then check your answers against this tutorial letter.

1 TUTORIAL MATTER

By now you should have received the following tutorial matter. If not, it is **your** responsibility to contact Unisa's **Despatch Department** (see Inventory Letter for particulars).

1.1 EDA3058

- TUTORIAL LETTER EDA3058/101/3/2017
- ONLY STUDY GUIDE for EDA3058: EDUCATION LAW AND PROFESSIONAL ETHICS



IMPORTANT! STUDY the booklet *my Studies @ Unisa*!
Do NOT contact your lecturers if you need to obtain study material.

2 MEMORANDUM OF ACTIVITIES INCLUDED IN THE STUDY UIDE

Please note that there may be slight differences in the formulation of the activities and self-evaluation questions. For example, “teacher(s)” was replaced with “educator(s)” and “pupil(s)” and “student(s)” with “learner(s)”. This was done to bring the terminology in line with current practice in education legislation and policy.

No memorandums are included for the activities of the Professional Ethics part because in most cases these activities require only your view.

STUDY UNIT 1



ACTIVITY 1

Write the following characteristics in the correct column that is, either column A or column B:

1 aimed at public interest
2 horizontal relationship
3 relationship agreed to on equal terms
4 orders the relationship between the State and the individual
5 vertical relationship
6 denotes a relationship of authority
7 orders the respective rights and obligations of private persons
8 further individual or private interests

Column A: Public law relationship	**Column B: Private law relationship**
aimed at public interest	furthers individual or private interests
orders the relationship between the State and the individual	orders the respective rights and obligations of private persons
vertical relationship	horizontal relationship
denotes a relationship of authority	relationship agreed to on equal terms



ACTIVITY 2

Write down a few examples of everyday situations in the school that might require some knowledge of the respective sources of law.

The Constitution

- In a situation where an educator needs to discipline a learner. (s12: “Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.”)
- In situations where religious freedom is concerned, such as the attendance of religious classes. (s15: “Religious observances may be conducted at state and state-aided institutions, provided that attendance at them is free and voluntary.")

- In a situation where a governing body needs to search a learner. (s14: “Everyone has the right to privacy, which includes the right not to have the privacy of their communications infringed.”)
- In a situation where a governing body needs to suspend a learner. (s33: In terms of this section “everyone has the right to administrative action that is lawful, reasonable and procedurally fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons”.)
- In a situation where new developments (such as the building of a new administrative block or more pavilions) are planned. (s24: “Everyone [also learners and educators] has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources”.)
- In a situation where the learner’s right to basic education is infringed upon (s29).

Legislation

South African Schools Act 84 of 1996

- In situations where learners are admitted to a school (s5: “A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.”)
- In situations where a learner needs to be suspended or expelled (s9).
- When the governing body adopts the Code of Conduct (s8).
- In a situation where punishment should be meted out (s10).

Labour Relations Act 66 of 1995

- In situations where educators wish to strike or seek arbitration or mediation.

Employment of Educators Act 76 of 1998

- In a situation where an educator’s actions constitutes misconduct.

South African Council of Educators Act 31 of 2000

- In a situation where an educator’s actions do not comply with the South African Council for Educators’ (SACE) Code of Conduct, for example, when an educator rapes a learner.

Common law

- In situations where the *ultra vires* and *in loco parentis* principles would be applicable.
- In situations where allegations of negligence are made against an educator.
- In situations where the rules of natural justice must be applied, for example when a learner is suspended.

Case law

- *Molestane v Premier of the Orange Freestate and Another* 1996 (2) SA 95 O. This case explains the meaning and application of the rules of natural justice.
- *Kruger v Coetzee* 1966 (2) SA 428 (A). This case explains the meaning and application of the reasonable person test.
- *Minister of Education v Harris* 2001 (4) SA 1297 (CC). This case deals with the age requirements for admission of learners to independent schools.

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STUDY UNIT 2



ACTIVITY 3

Study section s 2.2.3 and 2.2.4 and briefly distinguish between the two basic approaches to statutory interpretation. Which approach to statutory inter-pretation does section 39 of the Constitution support? Give reasons for your answer.

Two approaches to statutory interpretation are the textual and contextual approach. The textual approach is a narrow approach to statutory interpretation and focuses on the literal meaning of the text. The contextual approach is a broader approach and takes into account background factors and circumstances (eg the context).

Section 39(1) supports the contextual (goal-serving or functional) because it determines in terms of Chapter 2 (Bill of Rights) that in interpreting the provisions of Chapter 2 a court of law

(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
(b) must consider international law; and
(c) may consider foreign law.

When they interpret legislation, the courts must take the aim, spirit and intention of the Bill of Rights into account (s 39(2)), but to do so section 39(1) must be taken into account.

STUDY UNIT 3



ACTIVITY 4

Study the following scenarios and explain how the *ultra vires* principle could be applicable in both these cases

Mr Z is dismissed by the principal because he has been regularly coming to school under the influence of alcohol. This matter has been discussed with Mr Z and he has received various written warnings. He has also received written notification of his dismissal.

The *ultra vires* principle is a common law principle which concerns the validity of managerial acts. *Ultra vires*, literally translated means “beyond the legal authority”, which means that a person acted beyond his/her granted power. In this case the principal acted beyond his legal powers and his/her act can be regarded as invalid (that means it has no legal force) because in terms of section 11(1) of the Employment of Educators Act 76 of 1998 an educator can only be dismissed by the employer. The employer of an educator in service of the Department of Education is the Director-General and the employer of an educator in the service of a provincial department of education is the HoD (Head of Department of a province) (s(1)).

An educator refused to join a teacher's trade union because he disagreed with the union's political agenda. The principal called the educator to his office and gave him the ultimatum that he had to join the teachers' union within a month --- if he did not, he would be dismissed. The educator refused and was dismissed by the principal.

The *ultra vires* principle is a common law principle which concerns the validity of managerial acts. *Ultra vires*, literally translated means “beyond the legal authority”, which means that a person acted beyond his/her granted power. In this case the principal acted beyond his legal powers and his/her act can be regarded as invalid (that means it has no legal force) because in terms of section 11(1) of the Employment of Educators Act 76 of 1998 an educator can only be dismissed by the employer. The employer of an educator in service of the Department of Education is the Director-General and the employer of an educator in the service of a provincial department of education is the HoD (Head of Department of a province) (s(1)). The principal’s conduct can also be regarded as *ultra vires* because it infringes on the educator’s right to freedom of association.



ACTIVITY 5

Give as many examples as you can of situations in the school where the rules of natural justice have to be applied to learners.

Examples:

- when a learner violates a school rule and is disciplined
- when a learner is suspended
- when a learner is expelled



ACTIVITY 6

Give as many examples as you can of situations in the school where the rules of natural justice have to be applied to educators.

An example is an educator being accused of misconduct or negligence. Add at least two more examples.



ACTIVITY 7

Can you explain the reasons why parents have a say in the education of their children by taking the *in loco parentis* principle into account?

The educator acts *in loco parentis*, which means the parent delegates his/her parental authority to educators, who then have delegated authority. In the *Regulations to prohibit initiation practices in schools* (RSA 2002, par 2) *in loco parentis* is defined as “acting in the place of a parent who has entrusted the custody and control of his or her child to an educator or another person during normal intramural or extramural school activities. *In loco parentis* does not imply that the parent is replaced --- the parent merely delegates the parental authority to educators, who then have delegated authority.

YOU BE THE JUDGE!!

The idea for the following scenario was taken from Shoop and Dunklee (1992:82). Try the following "case" by considering all legal consequences and possibilities.



ACTIVITY 8

Peter van Vreden accidentally showed a PG13 film, XR, to the grade fours. When Peter picked the film at the video rental shop he didn't see the PG13 rating on the video box and assumed that it would be similar to a TV series with the same title. Peter was marking scripts while showing the video and did not notice its violence and the brief scene of nudity. Some of the parents complained that Peter was negligent.

By applying the necessary test for negligence, evaluate if Peter was indeed guilty of negligence.

The crux of the answer is not whether you think someone is guilty or not, but applying the correct legal principles and provisions in the specific scenario. Here is an example of how to tackle such a question.

Negligence can be defined as the failure to exercise the necessary degree of care for the safety and wellbeing of others. Negligence may occur as a result of failure to act when there is a duty to act, or it may occur as a result of acting in an improper manner.

The "reasonable person" (*bonus paterfamilias*) test is used to determine negligence. A defendant is negligent if a reasonable person in his/her position would have acted differently and the damage was reasonably foreseeable and preventable. Since educators are regarded as experts/professionals, the reasonable measure of expertise will be added to the standard expected of the general reasonable person. Thus the standard against which an educator's conduct would be measured is that of a reasonable educator.

To test whether an educator was negligent two criteria must be applied, namely *foreseeability* and *preventability*. In *Kruger v Coetzee* 1966 (2) SA 428 (A) (Neethling et al 1994), JA Holmes stated that:

> For the purpose of liability *culpa* (negligence) arises if -
>
> (a) a *diligens paterfamilias* in the position of the defendant
> (i) would foresee the reasonable possibility of his or her conduct injuring another person or property and causing him or her patrimonial loss; and
> (ii) would take necessary steps to guard against such occurrence; and
>
> (b) the defendant failed to take such steps.

In this case the court may find the educator guilty of negligence because he failed to foresee (anticipate) or recognise a potentially dangerous situation; he also ignored the possibility that an injury could occur. Secondly, he did not take reasonable steps to prevent an injury from occurring. He did not do what would be expected of a reasonable educator under the same circumstances. He should have checked the age restriction and watched the video himself before showing it to the learners.

It could be determined that it was possible for Mr Van Vreden to foresee and prevent the harm the violence and the nude scene might cause the learners.



ACTIVITY 9

Study the following case study and explain how the court applied the *diligens paterfamilias* principle and the reasonable person requirement for negligence in this case.

Peter, an eight-year-old, and his friend were running races between the school buildings during break. Peter's friend stepped onto a spade lying on the grass where a worker had left it. Peter ran into the spade's blade and injured his hand so badly that one of his fingers had to be amputated. The court found the worker, the school caretaker and the principal guilty of negligence. The court took the diligens paterfamilias principle and the reasonable person requirements for negligence into consideration.

Study the answer to the previous scenario and follow the example to formulate an answer to this question.

Study the answer to the previous activity and formulate your own answer to this question.



ACTIVITY 10

Study the scenario below and then answer the questions that follow:

Fritz, a grade six learner, claims that he saw Frederick scratching Mr T's car. Upon hearing about this, Mr T immediately rushes to his car to investigate. While he is out of the classroom, Frederick hits Fritz with a cricket bat and seriously hurts him. Fritz's parents claim that Mr T was negligent.

1 By referring to applicable common-law principles (rules of natural justice), explain how the principal will have to go about investigating the matter.

The principal has to adhere to the rules of natural justice:

(i) *audi alteram partem* --- to hear the other side
(ii) *nemo iudex in sua causa* --- no one may be a judge in his or her own case

2 Discuss the legal relationship between the principal and Frederick.

It is a public law relationship because it is a vertical, unequal relationship with the educator in a position of authority (representing the education authority) towards the learner. The learner issubordinate to the educator. The relationship is based on a public interest (education).

3 Define negligence, discuss the test used to determine whether or not Mr T was negligent and apply it to the facts of the scenario.

Study the answer to activity 8 and formulate your own answer for this activity.

STUDY UNIT 4



ACTIVITY 11

Explain how a court would apply the *stare decisis* principle to decide a case in which an educator who administered corporal punishment is on trial.

The judge took previous judgments of high courts on similar cases (cases which dealt with corporal punishment such as the *Williams* case and the *Christian Education for South Africa* case) into consideration when he/she passed judgment. He/she applied the precedent set by high court judgments to the case in dispute. He/she referred to the *ratio decidendi* (the reason for the judgment) of the cases. The *ratio decidendi* of a case consists of legal principles that the court applied to the material facts in order to reach a decision. The judge looked at the judgment of the majority because the *ratio decidendi* is found in the judgment in which the majority of judges based their judgment on the same reasons.



ACTIVITY 12

Answer the following questions after reading the titles of the following court cases:

***S v Lekghathe* 1982 (3) SA 104 (T)**
***S v W and Others* 1994 BCLR 135 (C)**
***Van Coller v Administrator Transvaal* 1960 (1) SA 110 (T)**
***Hiltonian Society v Croft* 1952 (3) SA 130 (A)**

(1) Say which parties are in dispute in each case.

- ***S v Lekghathe* 1982 (3) SA 104 (T)**: State versus Lekghathe
- ***S v W and Others* 1994 BCLR 135 (C)**: State versus W and Others. In cases involving minors or where the proceedings were held *in camera* (behind closed doors) the surname of the accused person or persons is not indicated.
- ***Van Coller v Administrator Transvaal* 1960 (1) SA 110 (T)**: Van Coller versus the Administrator of Transvaal
- ***Hiltonian Society v Croft* 1952 (3) SA 130 (A)**: The Hiltonian society versus Croft

(2) Say whether the case is a civil or criminal case.

- ***S v Lekghathe* 1982 (3) SA 104 (T)**: criminal case because the State is one of the disputing parties in this case
- ***S v W and Others* 1994 BCLR 135 (C)**: criminal case because the State is one of the disputing parties in this case
- ***Van Coller v Administrator Transvaal* 1960 (1) SA 110 (T)**: civil case because the State is not one of the disputing parties in this case
- ***Hiltonian Society v Croft* 1952 (3) SA 130 (A)**: civil case because the State is not one of the disputing parties in this case. Did you realise that this was an appeal court case?

(3) Identify the parties as appellants, respondents, plaintiffs, defendants, etcetera.

- ***S v Lekghathe* 1982 (3) SA 104 (T)**: The State is the prosecutor and Lekghathe is the accused.
- ***S v W and Others* 1994 BCLR 135 (C)**: The State is the prosecutor and W and Others are the accused.
- ***Van Coller v Administrator Transvaal* 1960 (1) SA 110 (T)**: Van Coller is the claimant and the Administrator of Transvaal is the defendant.
- ***Hiltonian Society v Croft* 1952 (3) SA 130 (A)**: The Hiltonian Society is the appellant and Croft is the respondent.

(4) State where the case was heard, in which volume the case is reported and on which page the report appears.

- ***S v Lekghathe* 1982 (3) SA 104 (T)**: Transvaal Supreme Court, volume 3, page 104
- ***S v W and Others* 1994 BCLR 135 (C)**: Cape Supreme Court, volume: not mentioned, page 135
- ***Van Coller v Administrator Transvaal* 1960 (1) SA 110 (T)**: Transvaal Supreme Court, volume 1, page 110
- ***Hiltonian Society v Croft* 1952 (3) SA 130 (A)**: Bloemfontein (Appellate Division), volume 3, page 130.

STUDY UNIT 5



ACTIVITY 13

Why do you think it is important that educators have knowledge of the Bill of Rights?

- The Bill of Rights contains fundamental rights and freedoms that underpin everything an educator does.
- Every school must develop and implement a code of conduct within the framework of the Bill of Rights.
- Educators should know their own rights and freedoms and those of the learners so that they can make valid and legally correct decisions.

You should not discuss individual rights here.



ACTIVITY 14

Give three practical examples of situations where the learner's right to dignity can be infringed in the school situation.

- In a situation where a learner with AIDS applies for admission to a school.
- In a situation where there is reasonable suspicion that a learner have drugs or a weapon in his/her possession and has to be searched.
- Add at least two more examples.

Study the scenario below and then answer the questions that follow:



ACTIVITY 15

Mr L administered corporal punishment to Peter, a grade seven learner. The governing body of Prime School wants to dismiss Mr L.

With reference to the learner's right to human dignity and the right to freedom and security of the person, discuss the legality of Mr L's act of administering corporal punishment. (Your answer must include reference to case law).

In terms of section 10 of the Constitution, every person has the right to human dignity and in terms of section 12; everyone has the right to freedom and security of the person, which includes the right

(c) to be free from all forms of violence from either public or private sources
(d) not to be tortured in any way
(e) not to be treated or punished in a cruel, inhuman or degrading way

Because corporal punishment is regarded as cruel, inhuman and degrading punishment, administering it will be regarded as an infringement of the learner's right to human dignity (s 10) as well as his or her right to freedom and security of the person (s 12). The Constitutional Court in *Christian Education SA v Minister of Education of the Government of the RSA* 2000 (10) BCLR 1051(CC) delivered judgment on corporal punishment in schools and referred to the provisions of the Schools Act. The court held that the administration of corporal punishment constitutes a violation of sections 10 and 12(1)(c), (d) and (e) of the
Constitution. It is, therefore, illegal for any person to administer corporal punishment to any learner at a public or private school.



ACTIVITY 16

Study this extract from the *Mail and Guardian* (2 March 2005) and then answer the question that follows.

Dagga and a knife were found hidden in a grade eight classroom at a Diepsloot school on Tuesday in a raid by more than 100 police officers using snuffer dogs. ... It was the result of numerous complaints by the school's principal that pupils were carrying weapons ...

In this case, the raid was conducted by the police, but will the school's principal be able to conduct a lawful search of learners' property under these circumstances? Support your answer by referring to the learners' right to privacy as well to *Government Notice 776 of 1998.*

The Constitution (s 14) stipulates that everyone has the right to privacy, which includes the right not to have

(a) their person or home searched
(b) their property searched
(c) their possessions seized
(d) the privacy of their communications infringed

In some cases, the need to conduct a search may be unavoidable, for instance, when there is *reason to believe* there are drugs, dangerous weapons or stolen property on the school premises, or that some learners have drugs, dangerous weapons or stolen property in their possession. The principal will not be able to conduct a random search for drugs or weapons, but if he or she has a reasonable suspicion that a specific learner or group of learners has/have drugs or weapons in his/her/their possession, he or she may, in terms of *Government Notice* 776 of 1998, search such a learner or learners or his/her/their property. The principal must, however, take precautions to ensure that such a search is reasonable and justifiable. Parents and learners should be informed of the school's procedures for conducting searches.

This item however does not permit random searches and seizures. Note that the Education Laws Amendment Act 31 of 2007 was passed. Of particular importance is the insertion of section 8A in the Schools Act. This section now permits random searches if a fair and reasonable suspicion has been established:

"8A(1) …

(a) that a *dangerous object* or *illegal drug* may be found on school premises or during a *school activity*; or

(b) that one or more learners on school premises or during a school activity are in possession of dangerous objects or illegal drugs."

Random urine or other non-invasive drug testing are now also permitted:

"8A(8) The principal or his or her delegate may at random administer a urine or other non-invasive test for illegal drugs, after taking into account all relevant factors contemplated in subsection (3)."

In terms of subsection (3) before a random search is done or a drug test administered the following factors should be taken into account:

"(i) the best interest of the learners in question or of any other learners at the school;
(ii) the safety and health of the learners in question or of any other learners at the school;
(iii) reasonable evidence of illegal activity; and
(iv) all relevant evidence received."



ACTIVITY 17

Explain why the following rights must be considered when a learner is suspended:

- **Just administrative action (s 33)**
- **Education (s29)**
- **Access to information (s32)**
- **Human dignity (s10)**
- **Freedom and security of the person (s12)**

- **Just administrative action (s 33)**

The Bill of Rights contains guarantees with regard to the way the state administration may deal with individuals. In terms of section 33, everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. In the school context, administrative action includes daily acts (functions) performed by school officials during the course of managing the school. Thus, suspending a learner for misconduct is an administrative action that must comply with the requirements for just administrative action (i.e. it must be lawful, reasonable and procedurally fair).

- **Education (s29)**

The learner has the right to basic education and the suspension may not unreasonably limit this right.

- **Access to information (s32)**

The learner has the right to information which is required for the exercise or protection of his or her rights.

- **Human dignity (s10)**

The administrative action (suspension) must not infringe the learner's right to have his or her dignity respected and protected.

- **Freedom and security of the person (s12)**

The administrative action (suspension) must not infringe the learner's right not to be deprived of freedom arbitrarily or without just cause, to be free from all forms of violence from either public or private sources, not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading way.

STUDY UNIT 6

The study guide does not include any activities for this study unit.

STUDY UNIT 7



ACTIVITY 18

Study the following scenario based on the facts of the *Governing Body of Mikro Primary School & Another v Western Cape Minister of Education & Others* and then answer the questions that follow:

Mikro Primary School has been a single-medium school in which Afrikaans has been the medium of instruction since 1973. The Western Cape Minister of Education instructed the principal of the school to admit about 40 grade 1 learners (in the end it was only 21 learners) and to teach them in English. This directive came with the threat of disciplinary action in the case of non-compliance. The school approached the court arguing that the directive was unlawful in the circumstances and that the HoD (second respondent) had no right to force a language policy on the school which is in sharp contrast with the existing language policy of the school. The existing policy was legitimately determined in terms of section 6(2) of the Schools Act. The HoD should have followed the procedures set out in sections 22(1) and (2) of the Schools Act if submitting that the language policy was unlawful.

1 On which grounds could the school argue that the directive was unlawful? Substantiate your answer with reference to legislation that regulates the adoption of a language policy for public schools.

The source of education law is the South African Schools Act 84 of 1996. Section 6 of the Schools Act states that the governing body may choose the language to be used for teaching and learning in a school. In deciding on the language policy, the school must comply with the Constitution, the Schools Act and any relevant provincial law (s 6(2)). The Minister of Education may lay down rules, norms and standards for the language policy in public schools. No form of racial discrimination may be practised in implementing the language policy (s 6(3)).

2 Identify the source of education law that regulates the admission policy of public schools and discuss the legal provisions regulating the adoption of such policy.

The Admission Policy for Ordinary Public Schools provides that the admission policy of a public school is determined by the Governing Body in terms of section 5(5) of the Schools Act. The admission policy may not conflict with the Constitution, the Schools Act or applicable laws in a province. The Schools Act (s 5(1)) provides that a public school must admit learners and may not unfairly discriminate against any applicant. In *Matekane and Others v Laerskool Potgietersrus* 1996 (3) SA 223 T, the issue of the right of a learner not to be unfairly discriminated against was addressed. In this case, the court enforced the right of all learners to have access to public schools. In this case, although the school's admission policy discriminates against learners who prefer to be taught in English, the discrimination is not unfair discrimination.



ACTIVITY 19

Study the discussion above and section 5.4.4 (right to privacy) and write a paragraph on the inconsistencies between the provisions of the various education law sources about searches and seizures.

Various education law sources regulate searches and seizures in public schools. Section 8A of the Schools Act, as amended by section 7 of the Education Laws Amendment Act 31 of 2007, provides for random searches and seizures. Sub regulation 4(3) of the *Regulations for safety measures at public schools* authorise a police official, or in his or her absence, the principal or his or her delegate, upon reasonable suspicion, to conduct a warrantless search of the school premises. A police official, or in his or her absence, the principal or his or her delegate may also search any person present on the premises or seize any dangerous object or illegal drugs present on the school premises or on a person.. The *Regulations to prohibit initiation practices in schools* authorise the principal or an educator to conduct individual searches based on a reasonable suspicion that the learner is in possession of an illegal object. The *National policy on the management of drug abuse by learners in public and independent schools and further education and training institutions* provides for searches of individual learners but prohibits random searches. The policy gives no indication who are authorised to conduct such searches, mention is made only of the requirement that the person conducting the search must be of the same gender as the learners searched. As you saw in section 5.4.4 (right to privacy) the *Guidelines for the consideration of governing bodies in adopting a Code of Conduct for Learners* (Notice 776 of 1998) also authorise the principal or an educator to conduct individual searches based on reasonable suspicion.

Whereas the Schools Act authorises random searches and does not address searches of individual learners, the *Regulations for safety measures at public schools* and the *Regulations to prohibit initiation practices in schools* and the *Guidelines for the consideration of governing bodies in adopting a Code of Conduct for Learners* do not address random searches and the *National policy on the management of drug abuse by learners in public and independent schools and further education and training institutions* even prohibits random searches.

Only the Schools Act permits body searches. Specific requirements must be met. If the principal is of the same gender than the learner he or she must conduct the search. If the principal is not of the same gender than the learner, the principal must delegate the task to a delegate of the same gender than the learner. The search must be conducted in a private area and not in view of another learner. One adult witness of the same gender than the learner must be present. Lastly, the search may not extent to a search of a body cavity of the learner.

Study the scenario below and then answer the questions that follow:



ACTIVITY 20

The governing body expels Thandi after it becomes known that she is pregnant. Her parents are furious. They argue that the governing body may not expel their daughter and that an expulsion on the grounds of pregnancy constitutes an infringement of Thandi's fundamental rights.

1 On what legal grounds can Thandi's parents rely to support their argument that the governing body may not expel Thandi?

In terms of section 9(2) of the Schools Act, a learner may only be expelled by the HoD if found guilty of serious misconduct after a fair hearing. The governing body must make a recommendation to the HoD who must, within 14 days, decide whether or not to expel the learner. If the governing body expels a learner without the permission of the HoD, it has performed an *ultra vires* act. A learner or the parent has the right to appeal to the MEC against a decision by the HoD to expel the learner. Thandi's parents will thus first have to approach the MEC before they can approach the court.

2 On what legal grounds can Thandi's parents rely to support their argument that an expulsion on the grounds of pregnancy constitutes an infringement of Thandi's fundamental rights?

In terms of sections 9(3) and (4) of the Constitution, neither the state nor any other person may unfairly discriminate anyone on the grounds of pregnancy. Furthermore, although not mentioned in the study guide, the right to freedom and security of the person (s 12) also includes the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction and to security in and control over one's body.



ACTIVITY 21

Study the summary of the Initiation Ceremonies case and study unit 2. Identify 5 rights of initiates that were infringed by the unlawful initiation practices.

Humiliation; degradation; harassment; assault; *crimen iniuria*; intimidation and maltreatment.



ACTIVITY 22

Study the extract from the Schools Act above and write a paragraph on the principal's functions and responsibilities as professional manager of a public school.

The professional management must be undertaken by the principal under the authority of the HoD.
In section 16A (inserted by Act 31 of 2007) the functions and responsibilities of the principal of a public school are set out:

16A. (1) (a) The principal of a public school represents the Head of Department in the governing body when acting in an official capacity as contemplated in sections 23(1)(b) and 24(1)(j).

(b) The principal must prepare and submit to the Head of Department an annual report in respect of –

(i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister in terms of section 6A; and
(ii) the effective use of available resources.

(c) (i) The principal of a public school identified by the Head of Department in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the school will be improved.

(ii) The academic performance improvement plan must be -

(aa) presented to the Head of Department on a date determined by him or her; and

(bb) tabled at a governing body meeting.

(iii) The Head of Department may approve the academic performance improvement plan or return it to the principal with such recommendations as may be necessary in the circumstances.

(iv) If the Head of Department approves the academic performance improvement plan the principal must, by 30 June, report to the Head of Department and the governing body on progress made in implementing that plan.

(v) The Head of Department may extend the date contemplated subparagraph (iv) on good cause shown.

16A. (2) The principal must -

(a) in undertaking the professional management of a public school as contemplated in section 16(3), carry out duties which include, but are not limited to -

(i) the implementation of all the educational programmes and curriculum activities;
(ii) the management of all educators and support staff;
(iii) the management of the use of learning support material and other equipment;
(iv) the performance of functions delegated to him or her by the Head of Department in terms of this Act;
(v) the safekeeping of all school records; and
(vi) the implementation of policy and legislation;

(b) attend and participate in all meetings of the governing body;

(c) provide the governing body with a report about the professional management relating to the public school;

(d) assist the governing body in handling disciplinary matters pertaining to learners;

(e) assist the Head of Department in handling disciplinary matters pertaining to educators and support staff employed by the Head of Department;

(f) inform the governing body about policy and legislation; and

(g) provide accurate data to the Head of Department when requested to do so.

16A.(3) The principal must assist the governing body in the performance its functions and responsibilities, but such assistance or participation may not be in conflict with-

(a) instructions of the Head of Department;

(b) legislation or policy;

(c) an obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister; or

(d) a provision of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Personnel Administration Measures determined in terms thereof.".

Study the extract below that has been taken from an article from the Education Rights Project (Wilson 2002) and then answer the question that follows.



ACTIVITY 23

Recent research conducted by ACCESS --- a children's rights group --- heard that in one school, children of non-fee-paying parents were forced to sit on the floor, while desks and chairs were reserved for those whose parents could pay. The ERP is currently investigating a case in KwaZulu-Natal, where a school has allegedly made registration for the next academic year conditional on the "up-front" payment of school fees. Parents unable to pay have been forced to work free of charge in the school as cleaners and gardeners, to ensure their children's continued attendance.

Evaluate the way learners and parents in the scenario were treated. Base your evaluation on the legal provisions that regulate the determination/fixing and payment of school fees as found in the Constitution and the Schools Act.

Constitution

If a parent refuses to pay school fees, the governing body may not exclude the learner from the school until his or her parent has paid school fees, as section 29(1) reads that everyone has the right to a basic education. A learner may not be excluded or discriminated against in any manner, as section 9 provides protection against discrimination. In this instance, the learners were definitely discriminated against.

Legislation

Section 39 of the Schools Act stipulates that school fees may be charged at a public school if the following requirements are met:

- The majority of parents must decide that school fees will be charged at that school. Parents must vote on this at a meeting of parents to consider the budget of the school.
- The parents must also approve the amount of the school fees. This means that a governing body cannot decide on its own what the amount must be.
- Equitable rules and procedures must be made on how parents who are unable to pay will be excused from paying all or a part of the school fees. The Minister of Education provides regulations on this issue and these must be taken into account by governing bodies.

Once the majority of parents have approved the charging of school fees and the exemption of certain parents, the governing body must carry out this decision. In other words, it must make sure that the fees approved are charged, that accounts are sent out to parents who must pay and that the money owed is actually paid to the school. The governing body cannot change the decision of the parents and the parents can rightfully demand that their decision be carried out by the governing body by means of legal process. Thus, in the case where the governing body made registration for the next academic year conditional on the "up–front" payment of school fees and where the parents were forced to work in the school as cleaners and gardeners in order to ensure their children’s continued attendance, the governing body did not follow the correct procedures and acted *ultra vires*.

STUDY UNIT 8



ACTIVITY 24

YOU BE THE JUDGE !!

The idea for the following scenario was taken from Shoop and Dunklee (1992:86). Try the following <u>case</u> by considering all legal consequences and possibilities.

Mr L, the high school industrial arts instructor in Springwater, is a hobbyist gunsmith. Mr L inadvertently left a revolver and some ammunition in the pocket of his jacket, which was hanging in his classroom. The jacket was stolen. Although the gun and ammunition were later returned, the employer dismissed Mr L on grounds of misconduct. It was Mr L's first offence.

Points to consider:

(1) Consider the <u>Code of Good Practice</u> (see section 8.2.5) and pay attention to the grounds on which an educator could be dismissed. Is misconduct a valid reason for dismissal? It should be proven that he was posing a deliberate threat to other people's safety.
(2) Consider if the dismissal of Mr L by the HOD would be <u>ultra vires</u> or not.
(3) Which procedures should the HOD have followed to dismiss Mr L?

This activity tests whether you have the following knowledge and are able to apply it:

- The legal grounds (reasons) for dismissing an educator. Your argument should be based on the Code of Good Practice of the Labour Relations Act 66 of 1995 and the Employment of Educators Act 76 of 1998 (See section 8.2.5 and 8.3 of the Guide). To determine whether Mr L constituted a threat to the safety of others, one must apply the "reasonable person" test to ascertain whether or not he was negligent. It is fair to expect an educator to exercise great caution, especially with regard to a firearm.
  The requirements that should be met before a dismissal can be regarded as fair. In other words, does the dismissal satisfy the requirements for fair administrative action. Here the rules of natural justice (p 17 in the study guide) as contained in common law (the principles of *audi alteram partem* and the *nemo iudex in sua causa*) and the Constitution (s 33) apply. However, the scenario does not supply adequate information to pass judgment in this regard.

- When and why an action can be regarded as *ultra vires*. An employer does have the right to dismiss an employee if valid reasons are given for doing so, and if he/she has followed the correct procedure. Thus in this instance, the employer does have the power to dismiss Mr L, and it is impossible to ascertain whether the correct procedures were followed. It would appear that this was not an *ultra vires* act.

- The correct procedures for dismissal are followed. The procedures that should be followed during a disciplinary hearing do not form part of the content of this module.

Comment: You do not have to try and prove Mr L's innocence or guilt. Your answer should merely indicate what legal provisions (in the legislation and other legal sources) are relevant here so that you can apply them to the scenario.

3 MEMORANDUM OF SELF –EVALUATION QUESTIONS INCLUDED IN THE STUDY GUIDE

STUDY UNIT 1

(1) Give a definition of the term *law*.

Law is the social code of conduct which contains the rules, laws, norms and principles with which society must comply.

(2) Describe the concept of *education law*.

The concept *education law* can be defined as those components of the Constitution, other statutory laws, the common law and case law that regulate an education system and regulate the multilateral interaction of individuals, groups, independent bodies and official authorities within that system. In short, *Education law* is a collection of legal rules from a variety of legal disciplines which have in common the fact that they apply in education.

(3) ***Education law*** may be defined as ...

1 legal rules from the Constitution and other statute law which have in common the fact that they have to be applied in education.
2 legal rules from the common law which have in common the fact that they have to be applied in education.
3 legal rules from case law which have in common the fact that they have to be applied in education.
4 all of the above.

(4) What is the most important function of the law in general?

Law creates order in a harmonious way in society as a whole and also in specific relationships.

(5) Mention five functions of education law.

Education law
- facilitates and regulates behaviour
- creates harmony and order
- determines powers and duties of functionaries
- defines the parameters within which education activities are performed
- protects the rights of individuals and groups involved in education
- prescribes requirements for the provision, governance and financing of education

(6) Which ONE of the following is NOT a function of education law?

Education law ...
1 facilitates and regulates behaviour.
2 defines the parameters within which education activities are performed.
3 determines the powers and duties of functionaries.
4 exercises professional discipline.

(7) Which of the following statements is CORRECT?

(i) It is not expected of educators to be well informed about the law and applicable education acts and regulations.
(ii) Educators are not expected to know what their legal accountability is in terms of extramural activities.

1 (i) is correct and (ii) is incorrect.
2 (ii) is correct and (i) is incorrect.
3 (i) and (ii) are correct.
4 (i) and (ii) are incorrect.

(8) Discuss three sources of education law and give an example of each.

- *The Constitution.* The Constitution is the supreme law and all other laws have to be in line with it. The Constitution, therefore is indicated as a separate source of law although, strictly speaking it is legislation.
- *Legislation that is promulgated*. For example, laws of parliament, provincial legislation, municipal by-laws, proclamations and regulations.

- *Common law*. Common law is made up of legal rules that were not originally written down but that have, over time, become accepted as the underlying basic law of society. This means that courts can judge cases according to principles and societal rules and norms as well as behavioural norms that are not written down in legislation but do apply at a certain time in society. Our common law is derived mainly from Roman-Dutch law and English law.

- *Case law*. Case law involves authoritive and final judgments of the higher courts which are binding on lower courts such as magistrates' courts.

Sources of law	**Examples**
• The Constitution	The Constitution of the Republic of South Africa 108 of 1996
• Legislation	National Education Policy Act 27 of 1996 South African Schools Act 84 of 1996 Labour Relations Act 66 of 1995 Employment of Educators Act 76 of 1998
• Common law	The *ultra vires* and *in loco parentis* principles The rules of natural justice, eg when a learner is suspended Reasonable person-test for negligence
• Case law	The case of *Dhlamini v Minister of Education and Training and Others* 1984 (3) SA (NPD) or any relevant case See activity 2 for more examples

(9) Name the three main branches of the South African legal system.

- Public law
- Private law
- Formal law

(10) Which ONE of the following is NOT one of the main branches of South African law?

1 Public law
2 Formal law
3 Private law
4 Law of evidence

(11) Distinguish between *public law* and *private law*.

Public law is that part of law that orders the relationship between the state and the individual, while private law governs the relationship between private persons. A public law relationship is a vertical relationship because it denotes a relationship of authority where the party in authority is the state authority (eg education authorities) acting in the public interest. A private law relationship is a horizontal relationship between persons and bodies who agree to this relationship on equal terms, usually to further their individual or private interests.

(12) Define *administrative law*.

Administrative law organises the daily administration of the government. It can be described as the legal discipline that regulates the actions, powers and organisation of the state administration.

(13) Select the most appropriate option:

Administrative law can be described as ...

1 the law that involves the working and relationships of the central authoritive organs.
2 the law that focuses on transgressions that violate the interests of the community.
3 the law that has to do with the legal validity of an agreement or contract.
4 the law that organises the daily business or administration of government.

(14) Define the concept "legal subject".

A legal subject is *persona iuris*, that is, a person in the eyes of the law and as such the bearer of rights and duties.

There are two classes of legal subjects:

- all human beings (called natural persons)
- juristic persons or entities other than human beings upon which the law bestows legal personality

(15) Why should an educator possess knowledge of education law and of what use can it be to an educator?

- Knowledge of education law can help educators make valid and lawful decisions, in other words, decisions that will not create legal problems for themselves. Educators who know education law will also know about the rights and obligations of other parties.
- All educators are in some way or other involved in management and educational actions and must thus be aware of the relevant legal principles and requirements.
- The particular position of authority which educators occupy has many legal implications, especially with regard to possible accountability for negligence. Education law describes the authority of the educator and especially of the educational manager.
- Educators who know the demands of the law will probably provide better for the safety of children than will those who are ignorant of the law.
- Education law provides a clear framework of the role of the educator as a professional person.
- Successful teaching depends on the manner in which legal prescriptions such as educational policy, rules and regulations are applied. Only educators who know education law will know how to interpret policy and correctly implement procedures, rules and regulations.

(16) Which ONE of the following statements is CORRECT?

1 Private law governs the relationship between the State and private persons.
2 The governing body of a school is a legal subject.
3 A *delict* is an unlawful act by which the State violates the rights of a private person.
4 Courts cannot judge cases according to principles and societal rules and norms which are not recorded in legislation.

(17) Select the most appropriate option:

A public school is a ...

1 natural person without legal personality.
2 juristic person without legal capacity.
3 juristic person which participates in legal activities through its functionaries.
4 natural person with legal capacity.

(18) Study the following scenario and then answer the questions that follow.

DD, a learner of AHA Secondary School attacked an educator, Mr B, and caused him grievous bodily harm.

18.1 Complete the names of the two kinds of legal subjects indicated in the table and then classify the legal subjects present in the scenario under the correct column.

Juristic persons	*Natural* persons
AHA Secondary School	*DD*
	Mr B

18.2 Is the following statement TRUE or FALSE? Substantiate your choice.

The legal relationship between DD and Mr B is a public law relationship.

The statement is true. It is a public law relationship because it is a vertical, unequal relationship with the educator in a position of authority (representing the education authority) towards the learner. The learner is subordinate to the educator. The relationship is based on a public interest (education).

STUDY UNIT 2

(1) Name two kinds of legislation.

Many students distinguished between national (seen as synonymous with parliamentary legislation) and provincial legislation. In the light of the new Constitution both these types of legislation are examples of original legislation and it therefore recommended that you rather distinguish between original and subordinate legislation.

- *Original legislation:* In terms of section 40(1) of the Constitution, the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Each sphere of government has its own distinct characteristics but all the spheres are interdependent and interrelated in their business of governing the country. The notion of “spheres” of government implies that provincial and local authorities do not have delegated or devolved authority but original authority, including original law-making authority. For this reason, provincial education legislation (eg the Gauteng Schools Act 6 of 1995), as well as municipal by-laws, are regarded as original and not subordinate legislation.

- *Subordinate or delegated legislation:* Subordinate legislation such as proclamations and regulations are issued by "executive" officials in the various spheres of government (ie regulations by a Minister, proclamations by the President, etc). It is thus clear that subordinate legislation can also be issued at national level. Sub-ordinate legislation is also published in a *Gazette*.

(2) Which ONE of the following kinds of legislation is regarded as subordinate legislation?

1 Parliamentary legislation.
2 Provincial proclamations and regulations.
3 The Constitution.
4 Legislation of the previous self-governing areas.

(3) Distinguish between an *Act*, a *bill* and a *regulation*.

The difference between a bill and an Act becomes clear when you look at how a statute is made. When a need for legislation arises, experts draft a bill on the matter. The bill is not a final statute, but only a proposal. The bill is published in the *Government Gazette* or *Provincial Gazette* so that there can be public comment on its content. The minister or MEC who is responsible for the matter presents the bill before Parliament or provincial legislature. The bill is then debated and the debates are published in the *Hansard*. Eventually Parliament or the provincial legislature votes on whether or not to pass the bill. If the bill is passed, it is signed by the President or Premier and the minister or MEC responsible and published as an Act (or statute) in the *Government Gazette* or *Provincial Gazette*; it usually comes into force on the date of publication.

A regulation, which is subordinate legislation, is passed by authorities who are vested with lawmaking power which is derived from an enabling statute. For example, the South African Schools Act 84 of 1996, which is original legislation, was passed by parliament. In terms of this Act the Member of Executive Council (MEC) of the different provinces is empowered to pass regulations on a number of education matters provided for in the Schools Act, such as language policy (s 6), codes of conduct (s 8) and discipline (s 9).

(4) Select the most appropriate option:

The difference between an Act and a regulation lies therein that ...

1 an Act is promulgated by the legislature, while a regulation is issued by a minister.
2 an Act is published in the *Government Gazette*, but not a regulation.
3 an Act can be amended at any time, but not a regulation.
4 an Act, but not a regulation, is regarded as delegated legislation.

(5) Explain how a statute is made.

When a need for legislation arises, experts draft a bill on the matter. The bill is not a final statute, but only a proposal. The bill is published in the *Government Gazette* or *Provincial Gazette* so that there can be public comment on its content. The minister or MEC who is responsible for the matter presents the bill before Parliament or provincial legislature. The bill is then debated and the debates are published in the *Hansard*. Eventually Parliament or the provincial legislature votes on whether or not to pass the bill. If the bill is passed, it is signed by the President or Premier and the minister or MEC responsible and published as an Act (or statute) in the *Government Gazette* or *Provincial Gazette*; it usually comes into force on the date of publication.

(6) Distinguish between *parliamentary legislation* and *subordinate legislation*.

Parliamentary legislation is passed by Parliament and is also referred to as statutes. In terms of section 44 of the Constitution national legislative authority is vested in Parliament. Because Parliament is one of the legislatures (law-making bodies) it passes original legislation. This includes legislation of a national nature (eg on defence) and legislation on other specific matters where national legislation would be more suitable (eg national education policy, norms and standards).

Subordinate legislation or delegated legislation (such as regulations and proclamations) may be passed by national, provincial or local government. It is not passed by a legislature, but by persons vested with subordinate legislative powers which are derived from empowering legislation, usually a parliamentary or provincial statute.

(1) Name two kinds of legislation.

Many students distinguished between national (seen as synonymous with parliamentary legislation) and provincial legislation. In the light of the new Constitution both these types of legislation are examples of original legislation and it therefore recommended that you rather distinguish between original and subordinate legislation.

- *Original legislation:* In terms of section 40(1) of the Constitution, the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Each sphere of government has its own distinct characteristics but all the spheres are interdependent and interrelated in their business of governing the country. The notion of "spheres" of government implies that provincial and local authorities do not have delegated or devolved authority but original authority, including original law-making authority. For this reason, provincial education legislation (eg the Gauteng Schools Act 6 of 1995), as well as municipal by-laws, are regarded as original and not subordinate legislation.
- *Subordinate or delegated legislation:* Subordinate legislation such as proclamations and regulations are issued by "executive" officials in the various spheres of government (ie regulations by a Minister, proclamations by the President, etc). It is thus clear that subordinate legislation can also be issued at national level. Sub-ordinate legislation is also published in a *Gazette*.

STUDY UNIT 3

(1) What is the origin of common law?

Common law is uncoded legal tradition (unwritten law) which derived from Roman-Dutch and English law. Over the years, however, South African law has acquired an indigenous character so that much of the Roman-Dutch and English law is no longer recognisable in its original form.

(2) Explain the concept of *diligens paterfamilias*.

Diligens (good) *paterfamilias* (father of the house or family) is a common law principle which means to act as a prudent (reasonable) father.

(3) By means of a practical example, explain the role that the reasonable person requirement plays in the determination of negligence.

Students' practical examples will differ, but you should have applied the legal theory to the examples.

One of the educator's most important *legal duties* is to ensure the safety and security of children placed inhis/her care. Educators are expected to provide *reasonable* supervision before, during and after school hours. It is, however, important to realise that educators cannot be expected to supervise children every minute of the school day, nor can they be held liable for all accidents that occur at school. The "reasonable person" (*bonus paterfamilias*) test is used to determine negligence. A defendant is negligent if a reasonable person in his/her position would have acted differently and the damage was reasonably foreseeable and preventable. Since educators are regarded as experts/professionals, a reasonable measure of expertise is added to the standard of the general reasonable person.

Thus the standard against which an educator's conduct is measured is that of a reasonable educator. The two criteria the courts use to establish whether a person has been negligent are foreseeability and preventability. Firstly, it must be determined if it was possible for the educator to foresee the potential risk or danger that might cause harm to the child(ren). In the second instance, it must be established if the educator took all the necessary steps to prevent the accident or injury from happening. In other words, did he/she do what would be expected from a reasonable educator under the same circumstances?

(4) Describe the concept of *negligence*.

Negligence is one of the terms found in common law, and can be defined as failure to exercise the necessary degree of care for the safety and well-being of others. Negligence may occur as a result of failure to act when there is a duty to act - or it may occur as a result of acting in an improper manner.

(5) Name two principles upon which the rules of natural justice are based.

- *audi alteram partem*: to hear the other side
- *nemo iudex in sua causa*: no one may be a judge in his/her own case

(6) Which one of the principles on which the rules of natural justice are based would apply in a scenario where allegations of misconduct are made against an educator? Give reasons for your answer.

Audi alteram partem applies here because the educator has the right to be heard --- to state his/her case. This principle is also provided for in section 33 of the Constitution.

(7) Study the following scenario and indicate which common law principle would be applicable. Give reasons for your answer.

A principal decides that the procedure for recommending educators for merit awards is too cumbersome and time consuming. She decides to use an easier method and ignores procedures laid down by the department.

Ultra vires. The *ultra vires* principle is a common law principle which concerns the validity of managerial acts. Literally translated it means "beyond the legal authority", which means that a person acted beyond his/her granted legal power. In this case the principal acted beyond her legal power to delegate this function to the other principal therefore acted *ultra vires*. The act performed by the other principal would in any case have no legal force.

(8) An educator has a duty of care.

(a) What is meant by the educator's duty of care?

Educators have an obligation in terms of their professional status as educator, and in terms of their original duties (because they act *in loco parentis*) to provide care and supervision for the children placed in their care.

(b) Why and under which circumstances is the *reasonable person requirement* used?

The reasonable person requirement is used as a measure when an educator is suspected of negligence. It is used to determine whether he/she could reasonably have foreseen the possibility of injury to the child, or to the protection of the child, and whether he/she could have taken steps to prevent it. In other words, did he/she do what would be expected of a reasonable educator under the same circumstances?

(c) Which factors determine the degree of the educator's duty of care?

The legal principle of *diligens paterfamilias*: *diligens* (good) en *paterfamilias* (father of the house or family) --- in other words, it is expected of the educator to be as caring as a concerned parent. This means that an educator is expected to take care of children in the same way as a caring parent. Other factors that the courts consider are the age and maturity of learners, the nature of the activity and the environment.

(9) Which ONE of the following statements is INCORRECT?

1 *Audi alteram partem* means “to hear the other side”.
2 *Nemo iudex in sua causa* means no one may be judge in his own case.
3 *In loco parentis* means to be as caring as a concerned father.
4 *Ultra vires* means “beyond legal authority”.

(10) Choose the most appropriate option:

In loco parentis implies *inter alia* that the educator ...

1 receives delegated authority.
2 replaces the parent.
3 accepts the responsibility only for the intellectual development of the child.
4 can be regarded as the primary educator of the child.

(11) Which of the following conditions are provided for by means of the *audi alteram partem* rule?

(i) A person who is accused or suspected of misbehaviour must be informed of the accusations against him.
(ii) An accused must be given a reasonable opportunity to react to the accusations.
(iii) An accused may not be judge in his/her own case.
(iv) All the interested parties must be heard.

1 (i), (ii) and (iv).
2 (iii) and (iv).
3 (i), (ii) and (iii)
4 none of the above.

(12) Which ONE of the following statements is INCORRECT?

1 Common law is non-statutory law.
2 Legislation is interpreted against the background of the Constitution.
3 Common law is enacted by Parliament.
4 Common law can be amended or repealed by legislation.

STUDY UNIT 4

(1) What is the importance of case law? Give an explanation.

The administration of justice is reflected in law reports. These law reports are a source of education law because, based on the *stare decisis* principle, a court may follow a precedent which was set by another court judgment and so new rules came into existence which thereafter may be applied in other competent courts. Case law therefore provides important legal principles on education matters that guide and inform educators and principals.

(2) The *stare decisis* principle refers to ...

1 a brief summary of the material facts of the case and the judgment.
2 the reason for the court judgment as indicated in the law report.
3 the principle that a previous court judgment can influence a later one.
4 the uncoded legal tradition as derived from Roman-Dutch and English law.

(3) Distinguish between

(a) the claimant and the respondent

In a civil case, the claimant is the party who sued and the respondent is the party who must respond (defend).

(b) the court order and court judgment

A court order is an order issued by a court or judge to do or not to do something. A court judgment refers to the judgment of the judges.

(4) Which of the following statements are CORRECT?

(i) The court case *S v Lekghathe 1982 (3) SA 104 (T)* was a civil case.
(ii) The State was the accused in the court case *S v Lekghathe 1982 (3) SA 104 (T)*.
(iii) Lekghathe was the accused in the court case *S v Lekghathe 1982 (3) SA 104 (T)*.
(iv) The court case *S v Lekghathe 1982 (3) SA 104 (T)* was a criminal case.

1 (i) and (ii) are correct.
2 (i) and (iii) are correct.
3 (ii) and (iii) are correct.
4 (iii) and (iv) are correct.

(5) Which ONE of the following statements is CORRECT?

1 The court case *Hiltonian Society v Croft 1952 (3) SA 130 (A)* is a criminal case.
2 In the case *Hiltonian Society v Croft 1952 (3) SA 130 (A)* Croft was the claimant.
3 In the case *Hiltonian Society v Croft 1952 (3) SA 130 (A)* Croft was the respondent.
4 In the case *Hiltonian Society v Croft 1952 (3) SA 130 (A)* the State was the prosecutor.

(6) Which ONE of the following statements is CORRECT?

1 In a civil dispute the plaintiff is the party who must respond.
2 In a criminal case one of the disputing parties is called a defendant.
3 The state is always one of the disputing parties in a civil case.
4 A dispute between two educators acting in their private capacity will be a private law dispute.

(7) Name the most important parts of a law report.

The title of the law report, the outline of the case, the head note and the content.

(8) Describe the concept of *ratio decidendi*.

Ratio decidendi refers to the reason for a court judgment as indicated in a law report.

(9) Select the most appropriate option:

Ratio decidendi refers to ...

1 a brief summary of the facts of the case and the judgment.
2 the reason for a court judgment as indicated in a law report.
3 the principle that a previous court judgment can influence a later one.
4 the uncoded legal tradition as derived from Roman-Dutch and English law.

STUDY UNIT 5

(1) Could a law which does not correspond with the Constitution continue to exist? Support your answer.

No. Section 2 of the Constitution reads: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled". This section makes it clear that all legislation must be compared with the Constitution to ensure that it does not contradict it. Law that was in force before 4 February 1997 (date of commencement of the Constitution 108 of 1996) will continue to be valid provided that it is not inconsistent with the Constitution (unconstitutional). If a law or part of a law contradicts the Constitution and cannot be reconciled with it, it will be annulled.

(2) Identify three rights and freedoms in Chapter 2 of the Constitution which pertain to education. Explain why it is important for educators to know these specific rights.

- *Equality*: Equality forms the basis of important and substantial changes which are necessary to establish and maintain a democratic education system in South Africa. Schools may not discriminate against learners. School policies need to be in line with the Constitution.

- *Freedom of association*: Freedom of association is particularly important for educators' organisations with regard to control over the profession and current and future labour legislation applicable to associations, unions and their members. Freedom of association is important to individual educators as professionals, to educational institutions and to those who manage and govern them, with regard to admission criteria, the establishment of such institutions on the basis of language, culture of religion, and their relationship with the educators employed by them.

- *Education*: According to this right every person shall have the right to basic education and to equal access to educational institutions, to instruction in the language of his/her choice where this is reasonable practical and to establish, where applicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.

- *Religious freedom*: Educators may not force learners to attend religion education classes.

(3) Why is section 104 of the Constitution of primary importance for the provision of education and for the establishment of an education system?

Section 104 of the Constitution stipulates that a provincial legislature shall have the competence to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 4. Schedule 4 makes clear, among other things, that the provinces will be responsible for education at all levels, excluding tertiary education. This means that most of the responsibility for the provision of education rests with the provincial departments of education. Their authority in this regard is to maintain and manage teaching and training institutions, to appoint and pay educators, and to provide and make use of resources for education. Note: This means that the employer of educators in the service of a provincial department of education is the Head of Department of Education of that province. In terms of section 20(5) and (6) of the South African Schools Act 84 of 1996 the school may also appoint educators and non-educators in additional (nonsubsidised) posts. This means that the public school is regarded as the employer of these educators/non-educators (not the governing body). The provincial laws may override national education laws promulgated by the national legislature, except in specific cases mentioned in subsections (3) and (4) of section 104.

(4) Why is the Constitution important to education?

- It is important because it is the supreme law of the Republic and law or conduct inconsistent with it is invalid. This section makes it clear that all education legislation and all conduct of education officials, for example, must be reconciled with the Constitution otherwise it will be illegal.
- The Bill of Rights (ch 2 of the Constitution) gives the essence of the social values upon which the new political, social and economic order (and also education) will be constructed. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state (which include education institutions), and as such must form the cornerstone of the South African education dispensation.
- Furthermore, according to section 239 of the Constitution public schools are organs of state and as such its functions are regulated by section 195 of the Constitution which provides that public administration must be governed by the democratic values and principles enshrined in the Constitution. As organs of state, public schools exercise public power and perform public functions in terms of legislation. Public schools therefore form part of the day-to-day administration of public education administration and function within the administrative law field.

(5) Indicate if the following statement is TRUE or FALSE:

An educator can be dismissed if he or she refuses to join a teacher's union.

Give reasons for your choice by referring to the applicable legislation.

False. The educators' right to association, that is to join or not to join a union is protected in the Bill of Rights (ss 18 & 23) and in the Labour Relations Act 66 of 1995 (s 6).

(6) Consider the following scenario:

An educator awarded a learner a poor mark for a history essay, even though the learner had substantiated her view. The educator gave a poor mark simply because the learner's views about a particular event were not the same as the educator's views.

(a) Explain, with reference to the appropriate legal source, what legal grounds the learner has to complain about this.

The learner could argue that the educator infringed her right to freedom of expression. Please note that this would be drastic action. The normal channels for complaints must first be followed. Ultimately the court remains the final adjudicator for such cases.

(b) Under what circumstances could a learner's rights in this regard be limited within the school context?

If the educator had asked for a specific view.

(7) Study the following scenario and indicate which rights, as set out in the Bill of Rights of the Constitution, are impaired in such a case.

Mr D had a problem with a Grade 12 boy, which led to a row. That afternoon when Mr D met his friends in a restaurant he told them about the incident. He told them that the boy has a low IQ and that he almost never passes a test.

The right to privacy and the right to human dignity.

(8) How does the law protect the child in the school?

A wide range of rights relating to children are guaranteed in section 28 of the Constitution. Protection includes the rights to a name and nationality from birth, parental care, security, basic nutrition, basic health and social services, protection against maltreatment, neglect, abuse or degradation, protection against exploitative labour practices, and to be treated in a manner that takes account of his/her age while in detention. Section 28 also provides that a child's best interests must always be of paramount importance in any matter concerning the child. This is in addition to all the other rights a "person" has in terms of the Bill of Rights. Legislation such as the Children's Act 38 of 2005 also requires that the best interests of the child should be paramount. Common law also provides protection to children, for example in the *in loco parentis* and *diligens paterfamilias* principles.

(9) Are you allowed to disclose a child's IQ under any circumstances to adults who request it? Support your answer by referring to the appropriate legislation.

No. It would be a violation of his/her right to privacy and human dignity. Please note, that there is no right to confidentiality per se, but it is implied in the right to privacy and is provided for in the South African Council for Educators' Code of Conduct. These rights are protected in the Bill of Rights (ch 2 of the Constitution). A child's IQ may be disclosed to his/her parents or a *bona fide* educational official where the child's interests are at stake.

(10) What does it mean when the right of one party may not violate the right of another?

It means that both parties have rights but that the rights of the one party may be limited by the rights of the other, and vice a versa. Both parties should therefore respect each other's rights. In a legal relationship, rights (and the corresponding duties) often clash. The learner has a duty to respect this right of the educator. The function of the law is to restore the legal balance; which may mean that the learner's right to freedom of expression is limited to protect the educator's dignity (eg when the learner uses vulgar language when speaking to the educator in the educator-learner relationship).

(11) Study the following scenario and answer the question that follows:

After receiving a complaint from the grade 10 religious education teacher that one of the Muslim learners was refusing to participate in the religious studies activities, the principal called the learner to his office and suspended her for 10 days pending an investigation into her conduct.

Evaluate the principal's decision to suspend the learner according to the *ultra vires* principle, the *audi alteram partem* principle and the right to religious freedom.

The principal did not act within the limits of her legal authority and therefore acted *ultra vires*. The principal does not have the legal right to suspend a learner. According to the South African Schools Act 84 of 1996, a learner may only be suspended by the governing body and then only after the learner was granted reasonable opportunity to make representations to the governing body in relation to such suspension. Then, within 7 school days of the suspension, the governing body must conduct disciplinary proceedings against the learner. If these disciplinary proceedings are not conducted within 7 school days, the governing body must obtain permission from the HoD for continuation of the suspension. Should it be decided during the disciplinary proceedings that the learner should be expelled, the governing body may extend the suspension for a period not longer than 14 days, pending the decision of the HoD whether or not to expel the learner.

The principal did not give the learner the opportunity to put her side of the case and therefore did not adhere to the *audi alteram partem* principle (now also included in s 33 of the Constitution).

Chapter 2 of the Constitution (s 15) and section 7 of the Schools Act 84 of 1996 also protect religious freedom. No learner may be discriminated against on the grounds of his/her religious convictions, conscience, opinion or belief.

(12) Mention five cases where punishment will be regarded as an infringement of the learner's right to freedom and security of the person.

Punishment will be regarded as an infringement of the learner's right to freedom and security of the person if:

- it is excessive and negligently administered
- it results in physical or psychological injury
- it is not in proportion to the offence
- there is not sufficient cause for punishment
- it does not suit the age of the learner

(13) *Basic education* can be defined as the attainment of a General Education Certificate on the completion of ...

1 grade 9.
2 grade 7.
3 the intermediate phase.
4 the foundation phase.

(14) The requirements set in the Constitution for the establishment of independent education institutions include *inter alia* that these institutions ...

(i) do not discriminate on the basis of race.
(ii) are registered with the state.
(iii) are managed by the Department of Education.
(iv) maintain standards that are not inferior to standards at comparable public educational institutions.

1 (i) and (iii) are correct.
2 (i), (ii) and (iii) are correct.
3 (ii) and (iii) are correct.
4 (i), (ii) and (iv) are correct.

(15) Does the right to receive education in the official language or languages of their choice in public educational institutions mean that everyone has to receive education in the language of his or her choice? Support your answer.

No. No right is absolute. The limitation clause, section 36 provides that all rights can be limited. Section 29(2) does not only provide for the right to education in the language of one's choice but also for limiting this right to situations where it is reasonable practicable.

(16) The Constitution requires that school education be transformed and democratised in accordance four values. Identify and briefly discuss these values.

- Human dignity, the achievement of equality and advancement of human rights and freedoms.
- Non-racialism and non-sexism.
- The rule of law applies, in other words, the Constitution and other law as enforced by the courts have higher authority than Parliament or the Government.
- All adults must be able to vote and there must be regular elections, a multi-party system and democratic government, accountability and openness.

STUDY UNIT 6

(1) Describe the aim of the National Education Policy Act 27 of 1996.

The aim of the Act is to determine national policy for education; to amend the National Policy for General Education Affairs Act of 1984 in order to substitute certain definitions for others; to provide anew for the determination of policy on the salaries and conditions of employment of educators; and to provide for related matters.

(2) State who determines national education policy. Explain how it is done and according to which terms.

The Minister of Education determines the national education policy after consultation with the appropriate consultative bodies and the Education Labour Relations Council (ELRC), the organised teaching profession, national organisations representing college lecturers, parents and learners, and also other national stakeholder bodies. National education policy must be determined in accordance with the stipulations of the Constitution of the Republic of South Africa 108 of 1996 and the National Education Policy Act 27 of 1996.

(3) Which ONE of the following statements is INCORRECT?

1 The Minister of Education determines the national education policy with the concurrence of the Minister of Finance.
2 Parliament determines the national education policy.
3 One of the objectives of the National Education Policy Act 27 of 1996 is to provide for the monitoring and evaluation of education.
4 The Education Labour Relations Council (ELRC) is one of the bodies which should be consulted when national policy on education is determined.

STUDY UNIT 7

(1) What is the purpose of the Schools Act?

The primary purpose of the South African Schools Act 84 of 1996 (promulgated in November of that year), is to make provision for a uniform system for organising, governing and funding of schools. The Act contains a number of important provisions which form the basis of the management and governance of schools. One of the main legal consequences of the Schools Act is that it makes provision for democratic school governance.

(2) What does the term *juristic person* mean?

In terms of section 15 of the Schools Act, a public school is now classified as a "juristic person with legal capacity to perform its functions in terms of this Act", which means that it has the legal capacity to perform its functions in terms of the Schools Act. In law, the term "person(s)" does not only refer to a human being or a group of human beings but also to abstract entities such as companies, banks, universities and public schools which are also known as “legal persons” or “juristic persons”. In terms of the law, a public school, as a juristic person, exists separately from the school buildings, school grounds, learners, educators or parents. This means that the school has rights and duties in its own name as if it were a natural person. However, a juristic person such as a school cannot participate in legal activities or function in the same way as a natural person; it therefore operates through its functionaries (the governing body and principal are functionaries of the public school).

(3) A public school is a ...

1 natural person without legal personality.
2 juristic person without legal capacity.
3 juristic person which participates in legal activities through its functionaries.
4 natural person with legal capacity.

(4) Which ONE of the following statements is INCORRECT?

1 The main purpose of the South African Schools Act 84 of 1996 is to provide a uniform system for the organisation, governance and funding of schools.
2 In legal terms, the term *person* refers only to natural persons, that is, human beings.
3 A *juristic person* is a legal entity such as a school.
4 The South African Schools Act 84 0f 1996 provides for the establishment of democratic school governance.

(5) Who determines the school's admission policy?

The governing body is required to formulate and draft the school’s admission policy. The admission policy may not conflict with the Constitution, the Schools Act or applicable school laws in a province (s 5(5)). A public school may not adopt an admission policy that will discriminate against any learner. The governing body may not set any test for learners to determine whether they should be admitted to a school, nor may the principal or anybody else be allowed to conduct such a test.

(6) Are admission tests permissible? Substantiate your answer.

No. The governing body may not set any test for learners to determine whether they should be admitted to a school, nor may the principal or anybody else be allowed to conduct such a test.

(7) Who may determine the language policy for the school?

Section 6 of the Schools Act states that the governing body may choose the language to be used for teaching and learning in a school. In deciding on the language policy, the school must comply with the Constitution of the Republic of South Africa 1996, the Schools Act and any relevant provincial law (s 6(2)). The Minister of Education may lay down rules, norms and standards for the language policy in public schools. No form of racial discrimination may be practised in implementing the language policy (s 6(3).

(8) May a learner, educator or other staff members be forced to attend religious meetings at the school? Support your answer by referring to applicable legislation.

Section 7 of the Schools Act states that "subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary". This provision is in keeping with section 15 of the Constitution which provides for religious freedom.
The provision has implications for the development of appropriate school policy and religious practices in the school and classroom. No learner or educator may be discriminated against on religious grounds.

Parents may withdraw their children from religious education classes and other religious activities.

(9) Who is responsible for drawing up a code of conduct for learners in a school?

1 The principal and educators.
2 The governing body of the school.
3 The Head of Department (HoD).
4 The Minister of Education.

(10) Indicate whether the following statement is TRUE or FALSE and give reasons for your choice:

A learner may be exempted from complying with certain provisions of the schools' Code of Conduct provided that his/her actions are in line with the Schools Act.

This statement is false. Section 8(4) of the Schools Act 84 of 1996 provides that a learner is obliged to comply with the Code of Conduct and nothing contained in the Schools Act exempt a learner from such an obligation.

(11) When and by whom may a learner be suspended from school?

According to the South African Schools Act 84 of 1996 a learner may only be suspended by the governing body and then only after the learner was granted reasonable opportunity to make representations to the governing body in relation to such suspension. Then, within 7 school days of the suspension, the governing body must conduct disciplinary proceedings against the learner. If these disciplinary proceedings are not conducted within 7 school days, the governing body must obtain permission from the HoD for continuation of the suspension. Should it be decided during the disciplinary proceedings that the learner should be expelled, the governing body may extend the suspension for a period not longer than 14 days, pending the decision of the HoD whether or not to expel the learner.

(12) May the principal expel a learner?

A learner may only be expelled by the HoD if he/she is found guilty of serious misconduct after disciplinary proceedings (a fair hearing). If a school principal expels a learner without the permission of the HoD, he/she will have performed an *ultra vires* act and will have contravened the South African Schools Act 84 of 1996.

(13) If a learner's parents want to appeal against his or her expulsion, they should appeal to ...

1 the Head of Department (HOD).
2 the Member of the Executive Council (MEC) who is responsible for education in a province.
3 the governing body of the school.
4 the principal of the school.

(14) Which ONE of the following statements is CORRECT?

1 The Head of Department (HoD) is required to formulate the admission policy of the school.
2 A learner may only be expelled by the governing body of a school.
3 A learner may only be expelled by the principal of a school.
4 The governing body may suspend a learner from a public school for not more than 7 school days as a correctional measure.

(15) Which ONE of the following persons may be the chairperson of the governing body of a specific school?

1 The principal of the school.
2 A parent who has a child at the school and is employed at the school.
3 A parent who previously had a child in the school.
4 A guardian of a learner at school who is not employed at the school.

(16) May educators and principals administer corporal punishment for very serious offences? Substantiate your answer by referring to applicable legislation.

Section 10 of the South African Schools Act 84 of 1996 stipulates the following:

- No person at a school may administer corporal punishment to a learner.
- Any person who contravenes subsection (1) is guilty of an offence on conviction, and is liable to a sentence which could be imposed for assault.

The Schools Act makes it clear that corporal punishment may no longer be used in public and independent (private) schools as a means of punishment. In addition, section 12 of the Constitution states that everyone has the right not to be punished or treated in a cruel, inhuman or degrading way. It is therefore illegal for any person to apply corporal punishment to any learner at a public or private school. Parents may not give principals or educators permission to use corporal punishment. Non formal uses of force such as slapping and rough handling are also prohibited. Principals and educators who ignore this regulation and apply corporal punishment at a school may be charged with assault in a court of law and punished.

(17) List the requirements set in section 8A of the Schools Act for body searches.

Only the Schools Act permits body searches. Specific requirements must be met. If the principal is of the same gender as the learner, he or she must conduct the search. If the principal is not of the same gender as the learner, the principal must delegate the task to a delegate of the same gender as the learner. The search must be conducted in a private area and not in view of another learner. One adult witness of the same gender as the learner must be present. Lastly, the search may not extend to a search of a body cavity of the learner.

(18) List the requirements for seizures.

The Schools Act lays down certain requirements for seizures:

The item must be clearly labelled. Particulars that must appear on the label are the name of the learner in whose possession the object or drugs were found, the time and date of the search, an incident reference number, the name of the person who searched the learner, the name of the witness and any other information that may be necessary to identify the item or the incident.

The item must be recorded in the school record book.

The item must then be handed over to the police. The police must then dispose of the item in terms of the Criminal Procedure Act 51 of 1977. If the police cannot immediately collect the item, the principal or his or her delegate must take the item to the nearest police station.

The police must issue a receipt for the item.

The Schools Act provides that no criminal proceedings may be instituted by the school against a learner in whose possession a dangerous object or illegal drugs were found. The school can only 45
institute disciplinary proceedings that must be in conformity with section 8A of the Schools Act.

(19) List the specific requirements that must be met before a drug test may be conducted.

The following specific requirements must be met before a drug test may be conducted:

The test must be conducted by a person of the same gender.

The test must be conducted in a private area and not in view of another learner.

One adult witness, of the same gender as the learner, must be present.

The sample must be clearly and correctly labelled with full particulars. Particulars that must appear on the label are the name of the learner, the time and date of the test, an incident reference number, the name of the person who tested the learner, the name of the witness and any other information that may be necessary to identify the item or the incident.

Only a device identified by the Minister and published in the Gazette may be used.

The procedure as identified by the Minister and published in the Gazette must be followed.

The principal or his or her delegate must

within one working day, if practicable, inform the parent that a random test or search and seizure was done in respect of his or her child

inform the learner and his or her parent of the result of the test immediately after it becomes available

A learner may be subjected to disciplinary proceedings (conducted in terms of section 8) if his or her sample tested positive for an illegal drug. Once again, no criminal proceedings may be instituted by the school against such a learner.

(20) Define the following concepts:

(a) humiliation
(b) degradation
(c) harassment
(d) assault
(e) crimen iniuria
(f) intimidation
(g) maltreatment

Humiliation is defined as "... any word or act which causes another to lose self-respect or the respect for others".

Degradation is defined as "... any behaviour towards humiliating another, causing loss of respect or standing in the school community".

Harassment is defined as "... behaviour which is hostile or offensive to a reasonable person and which unreasonably interferes with an individual's work, academic performance or social life and any behaviour that creates an undermining of the integrity or dignity of an individual. Such behaviour can make a reasonable person feel uncomfortable, unsafe, frightened, embarrassed, and may be physical, verbal or non-verbal ... the behaviour would be unwanted by any reasonable person and could not be justified through a personal or family relationship".

Assault is defined as "... the unlawful and intentional application of force, directly or indirectly, to another person, or threatening another with immediate personal violence in circumstances which lead the threatened person to believe that the other intends or has the power to carry out the threat".

Crimen iniuria is defined as "... the unlawful and intentional violation of the dignity or privacy of another, in circumstances where such violation is not of a trifling nature".

Intimidation is defined as "... any act by a person with the intent to compel or induce a particular person to do or abstain from doing any act or to assume or to abandon a particular standpoint by means of assault, injury or causing damage to that person or any other person, or ... threats to kill, assault, injure or cause damage to that person or any other person". This includes

- $ the victimisation of another
- $ one learner punishing another learner
- $ abuse of learners by adults or other learners
- $ any violence

(**21) Briefly discuss five initiation practices that are prohibited.**

Examples of unlawful initiation practices practiced are:

forcing initiates to shave their heads

forcing initiates to call seniors "baas"

being made to bow their heads and not being allowed to look seniors in the eye

confiscating or damaging initiates' property

continuously depriving initiates of sleep

forcing initiates to do physical exercises

applying any form of corporal punishment

(22) What are the responsibilities of principals in regard to initiation practices?

Principals are charged with the responsibility to make sure that no initiation practices take place in their school, in hostels or during any school activity away from the school premises. They must put systems in place to encourage learners to bring such practices to his attention

(23) What are the responsibilities of educators in regard to initiation practices?

Educators are charged with the responsibility to:
protect, promote and respect learners' right to privacy, to human dignity, to freedom and security of the person, their children's rights, their right to education and their right to a safe environment, which are conducive to education

assist the school governing body with discipline at the school and all school activities

control the actions of learners when these actions may inflict harm to others or to the learner, or violate the rights of other learners or educators

refer a learner who cannot adjust to the school and where his or her behaviour is objectionable because it violates the rights of others to the principal and inform this learner's parents and the governing body

(24) Section 16A of the Schools Act places certain restrictions on the principal's assistance to the governing body. Identify these restrictions.

The principal must assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with:

(a) instructions of the Head of Department;

(b) legislation or policy;

(c) an obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister; or

(d) a provision of the Employment of Educators Act, 1998 (Act No 76 of 1998), and the Personnel Administration Measures determined in terms thereof.

(25) When may school fees be charged at a school?

Section 39 of the South African Schools Act 84 of 1996 stipulates that school fees may be charged at a public school when the following requirements are met:

- The majority of parents must decide that school fees will be charged at that school. Parents must vote on this at a parents' meeting to consider the school's budget.
- The parents must also approve the amount of the school fees. This means that a governing body cannot decide on its own what the amount should be.
- Equitable rules and procedures must be laid down on how parents who are unable to pay will be exempt from paying all or part of the school fees. The Minister of Education will lay down regulations on this issue which governing bodies should adhere to.

Once the majority of parents have approved the payment of school fees and the exemption of certain parents from paying them, the governing body must enforce this decision. In other words, it must make sure that the fees that have been approved are charged, that accounts are sent out to parents who must pay and that the money that is owed is actually paid to the school. The governing body cannot change the parents' decision and the parents may rightfully demand that their decision be enforced by legal process by the governing body.

(26) Are parents obliged to pay school fees?

A parent of a learner is obliged (i.e. has a legal duty) to pay the school fees that have been approved by the parents. The only exception is the case of a parent who has been exempted. Such a parent need not pay any school fees at all, or must only pay a part of the school fees, depending on the rules. Remember that the term "parent" means more than just the natural parent of a learner. It also refers to someone who has custody (care) of a child as well as someone who undertakes to act as the parent of a child for the purpose of the child's education at a school.

(27) May the school take legal action against non-paying parents?

If a parent refuses or fails to pay school fees or a part thereof, the governing body has the right to use legal procedures to force the non-paying parent to pay and will have to enlist the services of an attorney to institute proceedings against a non-paying parent. However, if a parent refuses to pay school fees, the governing body may not exclude the learner from the school until his/her parent has paid the fees. A learner may not be excluded or discriminated against in any manner.

(28) Are all schools obliged to elect a Representative Council of Learners?

Section 11 of the South African Schools Act 84 of 1996 stipulates that every public school that enrols learners in grade 8 and higher must establish a Representative Council of Learners (RCL). The term "must" denote that this is obligatory (compulsory) for schools.

(29) Can schools choose not to have learners on the governing body?

No. According to section 23(2) of the South African Schools Act 84 of 1996, the elected members of the governing body shall comprise the parents of learners at the school, educators at the school, members of staff at the school who are not educators, and learners in grade 8 or higher at the school. Also note that the learners must be nominated and elected by the RCL (s 23(4)) and not appointed or co-opted by the teaching staff. The learners who are elected to the governing body do not have to be members of the RCL.

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(30) What is the difference between an elected member and a co-opted member?

A governing body may (i.e. it is voluntary) co-opt a member or members of the community to help it carry out its functions. These members are normally co-opted because of their expert knowledge or experience. Co-opted members do not have voting rights. Elected members are elected, through a process determined by the MEC (s 28 of the Schools Act), from a group of nominated candidates and they have voting rights.

(31) Can the principal be the chairperson of the school governing body?

No. Only a parent --- who is not employed at the school --- may be the chairperson of the governing body. In other words, the school principal or an educator may not be the chairperson. However, the principal is always a member of the governing body in his/her capacity as the principal (*ex officio*) of the school.

(32) Can an educator become a parent governor in the school where he or she teaches?

No. A parent who is elected to the governing body must have a child or children at the school and may not be employed at the school. For example, a parent who has a child at a school and is employed at the school as an administrator may not serve as a parent governor.

(33) May a parent whose children have left the school be elected as a parent governor?

No. A parent who is elected to the governing body must have a child or children at the school. However, such a parent may be co-opted if he/she has particular expertise, for example a lawyer or an accountant.

(34) May the governing body allow someone to use the buildings or the sports facilities of the school in order to raise additional funds for the school?

Yes. In terms of the South African Schools Act 84 of 1996, the school governing body must supplement the resources supplied by the State. Governing bodies are allowed to use the facilities of their school in a reasonable manner to obtain further income for the school.
The facilities of the school include their buildings or sport grounds. The governing body must make sure that a proper contract is drawn up and that measures are taken to ensure that the school's facilities are not misused.

(35) A *fiduciary relationship* means a relationship...

1 between equal partners
2 of distrust
3 of trust
4 between unequal partners

(36) Discuss the *fiduciary relationship* between the school and its governing body.

Section 16(2) of the Schools Act states that the governing body stands in a position of trust towards the school, which means that there is a relationship of trust between the governing body and the school (*fiduciary* relationship). To be in a position of trust means that the governing body must

- act in good faith
- carry out its duties and functions in the best interests of the school
- not disclose confidential information that might harm the school
- not engage in any unlawful conduct
- not compete with the school's interests and activities

STUDY UNIT 8

(1) What is the overall purpose of the Labour Relations Act 66 of 1995? Substantiate your answer.

The purpose of the LRA is to promote economic development, social justice, labour peace and the democratisation of the workplace.

(2) Explain the meaning of the following concepts:

(a) strike

A *strike* can be defined as "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to the term 'work' in this definition includes overtime work, whether or not it is voluntary or compulsory." (LRA 1995).

When studying such an definition it is important that you are able to state the meaning in your own words. Break the definition up in more manageable parts. For example:

- the partial or complete concerted refusal to work
- retardation or obstruction of work
- by persons who are or have been employed by the same employer or by different employers,
- for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee

Now simplify the phrases so that you will be able to remember them easier. For example:

- the partial or complete concerted refusal to work - “concerted” indicate here that it is not an action an individual will take but rather a mass action, a collective action.
- retardation or obstruction of work - “retardation” means slowing down, delaying or impeding work
- by persons who are or have been employed by the same employer or by different employers - the crux here is that it is an action taken by workers/employees against the employer
- for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee - aiming at remedying a grievance or resolving a dispute

So: A **strike** is a collective action by employees in the form of partial or complete refusal to work, or the slowing down or the obstruction of work in order to remedy a grievance or resolve a dispute.

(b) secondary strike

A **secondary strike** means a strike, or conduct in contemplation or furtherance of a strike, that is in support of a strike by other employees against their employer but which does not include a strike in pursuit
of a demand and referred to a council if the striking employees, employed within the registered scope of that council, have an important interest in that demand.

(c) lock-out

The term **lock-out** can be defined as "the exclusion by an employer of the employees from the employer's workplace, for the purpose of compelling the employees to accept a demand in respect of any matter of mutual interest between employer and employee, whether or not the employer breaches those employees' contracts of employment in the course of or for the purpose of that exclusion.” (LRA 1995).

(3) Study the following scenario and then answer the questions.

Mrs X was dismissed from a public school by the HoD because she contravened SACE’s Code of Conduct for educators. After a thorough investigation, Mrs X received a letter from the HoD which set out the complaints. These included "not starting on time", "inefficient discipline" and "poor record keeping". Prior to her dismissal, Mrs X was given several warnings and an opportunity to make the necessary improvements. She received written notification of her dismissal with the reasons spelt out clearly.

(a) On which legal grounds was the educator dismissed?

The educator could have been dismissed on the ground of misconduct (not starting on time) and incapacity (poor work performance: inefficient discipline and record keeping)

(b) Mention two other legally acceptable grounds for dismissal.

Dismissal based on the employer's operational requirements: The numbers of learners in the History classes at Forward Secondary School have decreased dramatically and two senior educators had to be discharged as a result of the abolition of their posts at the school.

Dismissal based on the employee's incapacity (continuous ill health).

(c) Do you think the dismissal was fair? Support your answer by referring to the LRA and the Employment of Educators Act 76 of 1998.

Yes. According to the Labour Relations Act 66 of 1995, the reasons for the dismissal may be regarded as *fair* reasons for dismissal. The educator contravened rules regulating conduct and performance standards which were included in the labour legislation and SACE Code of Conduct. It was thus reasonable to expect that the educator was aware of these rules and performance standards. The educator was given a fair opportunity to meet the required performance standards and received various written warnings in this regard and a fair hearing.

(4) List the functions of the ELRC.

Some of the functions of the Council are to

- negotiate about matters relating to
  - --- conditions of service
  - --- disciplinary and grievance procedures
  - --- remuneration
  - --- severance pay
  - --- consultation and negotiation structures
- prevent disputes
- settle disputes that have arisen or may arise

(5) Do you think educators should strike? Give reasons for your answer.

The answer may vary. However, bear in mind that an educator's right to strike may be limited by the rights of the child. According to the Bill of Rights, the child has the right to education, which would require professional behaviour on the part of the educator in a professional relationship with the learner. Section 28(2) also provides that "A child's best interests are of paramount importance in every matter concerning the child". If an educator strikes, this would deny the child his/her right to education and this could therefore not be regarded as in the child's best interest.

(6) Study the following scenarios and identify which of the three legitimate grounds of termination of employment (in accordance to the Labour Relations Act 66 of 1995) would be applicable should the educator be dismissed.

(a) ***Mr L seldom prepares for his lessons and gives learners homework to keep them busy while he fills in crossword puzzles.***

The conduct of the employee (misconduct).

(b) ***Mr P often loses his temper. During one such incident he pushed one of the girls in his class so hard that she fell off her chair.***

The conduct of the employee (misconduct).

(c) ***Ms T is a beginner educator who is appointed as Mathematics educator to the grade 12s for a probation period. However she does not manage to teach the subject in a logical, understandable manner.***

The capacity of the employee (incapacity: poor work performance).

(d) ***Miss P arrives late for school on a regular basis, smells of alcohol and often leaves her class unattended.***

The conduct of the employee (misconduct).

(e) ***Mr X does not mark scripts and tests and finds it difficult to provide an organised, disciplined milieu.***

The capacity of the employee (incapacity: poor work performance).

(f) ***A school made use of a business, Xeroco, to make their photostats. After the school bought a copier, the services of Mr F, whose task it was to take the material which needed to be photostated to Xeroco and collect it again afterwards, were no longer needed.***

Dismissal based on the employer's operational requirements.

(7) Mention three factors which should be considered when deciding to dismiss an employee for misconduct.

- the circumstances of the employee
- the nature of the job
- the circumstances of the infringement itself

(8) Indicate whether the following statements are TRUE or FALSE and give reasons for your choice:

(a) ***An educator only commits misconduct if he or she intentionally mismanages the finances of the State, a school, a further education and training institution, an adult learning centre.***

False, according to section 18 an educator commits misconduct if he or she intentionally or negligently mismanages the finances of a school.

(b) ***An educator who negligently damages the schools' bowling machine cannot be charged with misconduct.***

False, according to section 18 an educator commits misconduct if he or she wilfully, intentionally or negligently damages school property.

(c) ***An educator who uses the school's photocopier and paper to make copies of his or her thesis, does not commit misconduct.***

False, such an educator does commit misconduct. To use or possess property of the school without prior authorisation constitutes misconduct.

(d) ***An educator who refuses to buy dagga for the matric farewell commits misconduct, since he or she fails to carry out an order.***

False, according to section 18 an educator is only obliged to carry out a lawful order. Buying dagga is a criminal offence and the refusal to obey the order may be regarded as a just or reasonable cause for not carrying it out.

(e) ***Mr L did not commit misconduct by not completing the register because the principal didn't order him to do so.***

False, according to section 18 the completion of the register is a routine instruction and the failure to carry out a routine instruction constitutes misconduct.

(9) Which ONE of the following statements is CORRECT?

1 According to the Labour Relations Act 66 of 1995 educators are considered to be part of the broad civil service.
2 The Labour Relations Act 66 of 1995 made provision for the establishment of an Education Labour Relations Council (ELRC).
3 According to the Labour Relations Act 66 of 1995 educators may strike over unresolved disputes about unfair disciplinary actions.
4 The procedures to be followed before a person may strike (as set out in the Labour Relations Act 66 of 1995) are not applicable when a person wants to take part in a secondary strike.

(10) Which ONE of the following statements is INCORRECT?

1 According to the Labour Relations Act 66 of 1995 consultation with regard to retrenchments should result in agreement on ways of avoiding retrenchments.
2 According to the Labour Relations Act 66 of 1995 consultation with regard to retrenchments should result in agreement on the method for selecting the employees to be retrenched.
3 According to the Labour Relations Act 66 of 1995 consultation with regard to retrenchments should result in agreement on ways to limit the harsh effects of retrenchments.
4 According to the Labour Relations Act 66 of 1995 an employer must pay a retrenched employee severance pay equal to at least one month's pay for every completed year of continuous service.

(11) Who is the employer of an educator who is appointed in a non-subsidised post in a public school?

1 The principal.
2 The governing body.
3 The school where he/she is appointed.
4 The government.

STUDY UNIT 9

(1) Define the term *professional ethics* in teaching in your own words. (Hint: Use Funk's definition to organise your thoughts.)

Funk's definition:

> An occupation that properly involves a liberal education or its equivalent, and mental rather than manual labour; especially one of the three learned professions, law, medicine or theology. Hence any calling or occupation other than commercial, manual, etc, involving special attainments or discipline, such as editing, music, teaching, etc, also the collective body of those following such a vocation.

The term *professional ethics* thus refers to the ethics, norms and moral rules or principles that are applied to those practising a particular profession. In other words, professional ethics are action and behaviour that are worthy of emulation by certain professions. Loots (1990) says that professional ethics guide the actions of the professional practitioners of an occupation so that they can cope with situations in a professional manner.

(2) The concept *ethics*, *inter alia* refers to:

a Conscious, willed action.
b A professional code of conduct.
c The science of norms.
d Professional conduct.

(3) Which statement with regard to professional ethics is INCORRECT?

a Professional ethics have to do with an imposed professional code of conduct.
b To understand professional ethics the essential characteristics of a profession must be taken into consideration.
c Professional ethics differ from profession to profession.
d Professional ethics refer to right and wrong practices with regard to the practitioner of a profession.

(4) Suppose that you have been teaching for four years. Compare the ethics of your profession with those of a friend who is a medical practitioner. Try to find differences as well as similarities.

Open memorandum question. Use the criteria for a profession as well as a professional code of conduct for medical practitioners to indicate the differences and the similarities.

(5) Mention three implications that the professional code of conduct has for the practitioner.

- Educators who are registered undertake to keep to the stipulations of their professional code of conduct for the teaching profession.
- This code of conduct promotes respect for teachers and teaching as a profession because it gives status and acknowledgment to educators.
- The principles or rules set down in the code of conduct serve as guidelines for professional behaviour.
- If, because of their actions and behaviour, registered educators no longer adhere to the stipulations of the professional code of conduct, disciplinary steps are taken against them.

(6) Mention one implication that the professional code of conduct has for the community.

An educator recognises that an educational institution serves the community, and therefore acknowledges that there will be different customs, codes and beliefs in the community.

(7) Discuss nine criteria for a profession and apply these to the teaching profession by giving practical examples.

- **Unique service.** Here "unique" means that no other professional practitioner delivers the same service (**to teach and to educate**) (in other words, **only educators teach**. The service (**to teach and to educate**) delivered must be unique and clearly defined, and must be essential for the community. The interests of the client (**the learner**) must always be put first.
- **Intellectual skill and subject knowledge.** The importance of intellectual skill and subject knowledge is emphasised in the theoretical and practical aspects of an occupation (**teaching as an occupation**). The intellectual skill (**of the educator**) is an extremely important measure of true professionalism (**the teaching profession**).
- **Specialised training.** A long period of specialised training (**specialised educators' training**) is required. Specialised training results in specialised knowledge. Heavy demands are often made on professional practitioners (**educators**) for which they need specialised knowledge.
  An extensive basis of specialised knowledge with a certain degree of difficulty makes professional practitioners (**educators**) experts in their field.
- **In-service training.** Apart from specialised training, a person (**educators**) also requires continued exposure to in-service training. In order to deliver really effective service, the professional person (**the educator**) must remain a learner.
- **Continued research.** Continued, systematic research is important because obsolete concepts and/or actions must continuously be replaced by contemporary and valid concepts and actions. Research should also cover a broad spectrum in terms of selection, training and practice (**with regard to educators**).
- **Autonomy**. Extensive autonomy or the right of self-determination, in other words an extensive self-governing organisation (**for the teaching profession**), is a further criterion. A profession, (**also the teaching profession**) must protect its integrity. All professions strive to convince the community of their professional authority because they believe that they provide a professional service.
  A professional controlling body (**such as a professional teachers' association**) that represents all the members of the occupation and is the official mouthpiece of the profession has the following functions, for example:
  - to see that training institutions maintain set standards
  - to determine admission requirements to the profession
  - to handle expulsion or suspension
  - to protect the social and economic status of the profession

- **Personal responsibility.** A person who practises a professional occupation usually has professional authority based on specialised knowledge. He/she therefore has the freedom to give authoritative help, advice and instructions in a responsible manner. This is why practitioners of a profession (**educators**) must accept broad personal responsibility for their decisions and actions within the framework of their autonomy.
- **Ethical code.** Because the authority and privileges that the community gives to a profession can be misused for the individual professional person's benefit, it is characteristic for a profession
  (**the teaching profession**) to establish a professional code. This professional code contains a set of ethical principles according to which professional people should act to prevent malpractice. An ethical code thus systematically sets out the ideal behaviour of a professional person and is considered to be binding.
- **Subordination of financial reward to service.** Because the service provided is regarded as essential, the emphasis is on the service (**teaching and education**) delivered rather than financial reward.

(8) Which ONE of the following criteria is NOT valid for the evaluation of teaching as a true profession?

a The service should be unique and essential.
b Remuneration of the profession should enable the educator to maintain a high standard of living.
c A long period of specialised training is necessary.
d A profession requires sustained research and in-service training.

(9) Consider the following statement:

No substitute for the educator has yet been found. Even in this technocratic age, teaching aids, even of a highly specialised nature, have not yet taken the place of educators.

Do you agree with this statement? Give reasons for your answer.

Yes, the educator is irreplaceable because he/she does not only teach, but also educates. (Any other relevant information will do. Can education be replaced by the computer? Critical thinking is essential.)

10) Consider the following statement:

Educators' actions and behaviour both inside and outside the school reflect their personal adherence to the professional code of conduct for educators.

Do you agree or disagree with this statement? Give examples to support your opinion.

Yes. The actions of the educator both inside and outside the school should reflect professional dignity and professional responsibility as required by the ethics of his/her profession. (Any other relevant information will do. Critical thinking is essential.)

(11) State who administers the enforcement of a professional code of conduct?

The South African Council for Educators (SACE).

(12) What concerns the ethical principle of a profession?

a Teleology.
b Morality.
c Factually based doctrine.
d Instruction theory.

(13) Describe what action an educator control body can consider against an educator who is found guilty of disregard for the professional code of conduct.

If, because of their actions and behaviour, registered educators no longer adhere to the stipulations of the professional code of conduct, disciplinary steps are taken against them.

A teacher control body like SACE establishes a fair and equitable inquiry procedure by appointing a committee to investigate any alleged breach of the code of professional ethics.

SACE has the power to

- caution or reprimand
- impose a fine not exceeding one months' salary
- strike from the register the name of an educator found guilty of a breach of the code of professional ethics. In a case of gross professional misconduct, SACE has the power to remove the educator's name from the register. This means that he/she can no longer teach in a public school in South Africa.

(14) Define the following terms:

(a) Profession

The term *profession* is mostly used to describe an occupation that is essentially intellectual, requires specialised training and subscribes to and maintains a code of conduct. The term can best be understood in the light of the qualities or criteria for a profession.

(b) Ethics

The word *ethics* is derived from the Greek word *ethikos,* which means *moral philosophy*. Moral philosophy is the science of studying people's ethical judgement --- in other words, the science of studying ethics. Moral philosophy employs ethical principles to determine the morality of behaviour. This refers to the customs, habits, actions and behaviour of a person, an institution or a community.

Ethics are also concerned with terms such as values, norms, principles, convictions and morality. The term *ethics* is therefore interwoven with other terms.

(c) Professional code of conduct

A professional code of conduct is a binding set of ethical principles or rules that are held up as the ideal course of action for the practitioners of a profession in order to maintain a high standard of professional behaviour and practice.

(d) Criteria

Criteria are measures for judgment. They are principles or characteristics in terms of which phenomena can be identified or described.

(e) Stakeholders in education

Teaching stakeholders are all the role players involved in the educational system.

(15) Describe what the primary goal of a professional code of conduct should be.

The primary aim of a professional code of conduct is to make the educator aware of the importance of ethical behaviour.

(16) Give three objectives of a professional code of conduct.

Any three of the following facts:

A professional code of conduct

- protects and promotes the rights and obligations of members of the profession and their various associates
- protects the good name of the profession
- disciplines members of a profession
- creates ethical standards
- does away with incompetent and unethical behaviour

(17) Which ONE of the following functions is NOT APPLICABLE to an appropriate professional code of conduct?

An appropriate professional code of conduct . . .

a protects both the practitioner and the public.
b replaces the personal accountability of each individual for his/her personal decisions and actions.
c protects the good name of the profession as a whole
d eliminates possible mutual exploitation and malpractice.

(18) Which ONE of the following statements is INCORRECT?

An ethical leader...
a has a vision which inspires and expresses the mission of social structure.
b reveals valued-based thoughts, words and actions.
c should be a role model.
d is characterised by a lack of receptiveness for proposals of others.

(19) Describe the ethical principle of a professional code of conduct.

Moral norms/morals/values/moral convictions guide educators' actions and practice.

(20) Which statement with regard to the teacher as an ethical leader is INCORRECT?

a An ethical leader is expected to display value-based ideas, words and actions.
b The teacher as ethical leader is a role model.
c The vision of a teacher as an ethical leader inspires and embodies the mission of society.
d Without responsible teachers as ethical leaders a society has an general ethical vision and mission.

(21) Would you say that teaching is a fully-fledged profession? How does teaching compare with other professions such as medicine and law? Give reasons for your answer.

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(22) Outline any suggestions you would like to make to professionalise teaching further.

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(23) Suppose you are a principal who has decided to improve the professionalism of your educators. You decide to allocate one hour of a staff meeting after school to training in professionalism. What would your viewpoints on this be? Illustrate your viewpoints with examples of professional behaviour from your years as an educator and later as principal.

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(24) A function is held at the school where you teach with the aim of helping educators and parents to get to know one another. The principal asks you to give a talk discussing the educator as an ethical leader. What are your ideas on this subject that you would like to share with the parents?

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important. Use the discussion under the subheading 9.6.1 in the study guide as your point of departure.

(25) The concept *collective orientation* with regard to the teaching profession refers to ...

a specialised training.
b in-service training.
c unspoken knowledge.
d a service motive interwoven (and which forms a joint unity) with the devoted and responsible actions of a practitioner of an occupation.

(26) Discuss the seven roles of the educator.

(a) Explain the nature of every role

- **Learning Mediator:** The educator must mediate learning in a manner which is sensitive to the diverse needs of learners, including those with barriers to learning. He or she must construct learning environments that are appropriately contextualised and inspirational. Educators should communicate effectively, showing recognition of and respect for the differences of others.

  In addition, an educator will demonstrate sound knowledge of subject content and various principles, strategies and resources appropriate to teaching in a South African context.
- **Interpreter and designer of learning programmes and materials:** The educator must understand and interpret relevant learning programmes, design original learning programmes, identify the requirements for a specific context of learning, and select and prepare suitable textual and visual resources for learning. The educator must also select, sequence and pace the learning in a manner sensitive to the differing needs of the subject/learning area and learners.

- **Leader, administrator and manager:** The educator must make decisions, manage learning in the classroom, carry out classroom administrative duties efficiently and participate in school decision-making structures. These competencies will be performed in ways which are democratic, which support learners and colleagues, and which demonstrate responsiveness to changing circumstances and needs.

- **Scholar, researcher and lifelong learner:** The educator must achieve ongoing personal, academic, occupational and professional growth through pursuing reflective study and research in his or her learning area, in broader professional and educational matters and in other related fields.

- **Community, citizenship and pastoral role:** The educator must practise and promote a critical, committed and ethical attitude towards developing a sense of respect and responsibility towards others. The educator must uphold the Constitution and promote democratic values and practices in schools and society. Within the school, the educator must demonstrate an ability to develop a supportive and empowering environment for the learner and respond to the educational and other needs of learners and fellow educators. Furthermore, the educator must develop supportive relationships with parents and other key persons and organisations based on a critical understanding of community and environmental issues. One critical dimension of this role is HIV/Aids.

- **Assessor:** The educator must understand that assessment is an essential feature of the teaching and learning process, and must know how to integrate it into this process. The educator must have an understanding of the purposes, methods and effects of assessment and be able to provide helpful feedback to learners. Furthermore, the educator must design and manage both formative and summative assessment in ways that are appropriate to the level and purpose of the learning and meet the requirements of accrediting bodies. Detailed and diagnostic records of assessment must be kept. Assessment results must be interpreted.

- **Learning area/subject/discipline/phase specialist:** The educator must be well grounded in the knowledge, skills, values, principles, methods and procedures relevant to the discipline, subject, learning area, phase of study or professional or occupational practice. The educator should know

  about different approaches to teaching and learning, and how these may be used in ways which are appropriate to the learners and the context.

(b) Why are these roles significant for the educator?

Open memorandum. Opportunity for critical thinking.

(c) Apply each role to an applicable situation in the classroom and give a practical example to illustrate that role.

Open memorandum. Opportunity for creative and practical thinking.

STUDY UNIT 10

(1) Do you believe that educators have professional status? Substantiate your answer.

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(2) Explain what it means when we say that the rights of one partner may not violate the rights of another partner.

It means that both partners have rights but that the rights of the one partner "limit" the rights of the other, and vice a versa. They should therefore respect each other's rights. In other words, rights have corresponding duties.

(3) Give two practical examples (examples from practice) in which educators demonstrate their professionalism. (Hint: Use an example from the Bill of Rights.)

The status of an educator depends on the image that the other members of a community have of educators. This image must be one of a mature, independent person with self-confidence who takes responsibility for helping children on their way to responsible adulthood. Section 16 of the Bill of Rights refers to the right to freedom of expression. The rights and freedoms of other role players in education may, however restrict this right for the educator. Although the educator has the right to freedom of expression he/she may never make irresponsible statements to learners. (Any other link with an example from the Bill of Rights will do).

(4) Discuss the relationship between *professional status, professional consciousness* and *professional image* with regard to teaching as a profession.

Professional status of the educator
- It involves the essential service of the educator's work.
- It involves appreciation for his/her service.
- It involves remuneration and other material benefits.
- It embodies the esteem and respect that persons in the occupation receive on the grounds of their character, personality, training, service to the community, career success, maintenance of a professional code of conduct and financial welfare.

Professional consciousness of the educator
- It starts during the training years.
- It implies a consciousness of achievement.

Professional image of the educator involves
- professional maturity
- professional self-dependence
- professional self-reliance
- professional responsibility

The relationship between professional status, professional consciousness and professional image of the educator

- The professional status of the educator relates to professional consciousness because professional consciousness begins during the training years with the creation of a professional consciousness.
- Professional status relates to the professional image of the educator because this image reflects one of a mature independent person with self-confidence who can accept responsibility for assisting children on their way to responsible adulthood.
- The three concepts cannot be separated from one another.
- They are interwoven.

(5) Which ONE of the following statements is INCORRECT?

a. The teaching profession must develop its own professional pride, conscience and consciousness.
b. Consensus must be achieved among all educators about professionalisation actions.
c. The corporative image of the organised teaching profession should not receive centre stage.
d. Educators' professional status has to do with the professional image that they reflect.

(6) What important principle relating to professional status must be laid down during the training of educators?

Professional consciousness

(7) Give four guidelines to promote educators' professional status.

- The teaching profession must develop its own professional pride, conscience and consciousness.
- Provision of service by educators must be set as the highest priority.
- Consensus must be achieved among all educators about professionalisation actions.
- Thorough attention must be paid to matters which can affect the professional status of teaching negatively.
- The corporate image of the organised teaching profession must improve continuously and receive centre stage to display the contribution that educators make in an organised capacity to the provision of a quality service.

(8) Which ONE of the following statements is the MOST CORRECT statement?

a. Educators determine the professionalism of their station through their behaviour inside and outside the school.
b. Educators can be replaced by computers.
c. Educators need only display a professionally dignified image at school while busy teaching and educating.
d. Educators only have a professional duty towards the Department of Education as their employer.

(9) Complete the following sentence:

Educators as professional people do not only have rights but must also accept **responsibilities/duties** in a professional manner in order to do justice to their professional image.

(10) Which ONE of the following statements is INCORRECT?

a. When we talk about the professional responsibility of educators we refer to both their rights and their duties or obligations.
b. Educators have the right to compensation for the work that they do, but they also have the duty of obligation to give something in return by doing their job to the best of their ability.
c. Teachers' duties and the quality of professionally responsible relationships that teachers establish belong together.
d. The rights and duties of educators play no role in their professional relationship.

(11) Define the following key terms:

- **Professional status:** The status of an educator depends on the image that the other members of a community have of him/her. Status is conferred according to prestige, power and income. Bondesio (1983) interprets the conferment of status as the respect that the general public and decision makers (people in high regard in a community) show towards practitioners, and not just the special level of education that people in a specific profession have attained. Status is also conferred on a specific profession as a result of the appraisal of and appreciation for the value of the service that the profession provides.
- **Professional consciousness:** This is the consciousness the educator has of his/her own image. It is instilled during the training years and implies a consciousness of achievement.
- **Professional image:** This refers to the image the educator has of his/her own self as well as the image other people have of him/her. It implies professional maturity, professional self-dependence, professional self-reliance and professional responsibility.
- **Professional responsibilities:** This implies the responsibilities and duties of the educator which he/she should fulfil in a professional manner.

(12) Discuss four characteristics of a professional partnership.

- A partnership is an agreement between autonomous partners. Each partner has a unique, particular and essential task in the attainment of a common goal.
- Professional partnerships are expressed in teamwork. Partners support and are loyal to each other. If one of the parties neglects or fails to do his/her task the team's performance will be ineffective.
- Sovereignty in one's own field is important. The trespassing of one partner in the area of another can damage a relationship and restrict achievement of a common goal.
- Positive consultation, loyalty, responsible dialogue, fair points of view, co-responsibility and mutual trust are of vital importance.

(13) Which ONE of the following characteristics is NOT regarded as a characteristic of a professional partnership?

A professional partnership...
a is an agreement between autonomous partners.
b is expressed in teamwork.
c maintains sovereignty in one's own field.
d reduces pressure because if one partner neglects to do his or her task, there is still the other partner to accept responsibility.

(14) By means of a practical example, explain how educators' employment rights may be limited in terms of their professional duties and responsibilities towards the child.

The professional duties and responsibilities of educators are set out in the various educational laws and regulations. Educators have the right to compensation for the work they do, but also have a duty or obligation to give something in return by doing their teaching job to the best of their ability.

Practical example:
Educators need not participate in long strikes because of a better salary. That will violate the learners' right to education.

(15) Which ONE of the following responsibilities is NOT regarded as a responsibility of an educator towards a learner?

a To serve as a mouthpiece for learners.
b To evaluate and provide feedback on learners' work.
c To exhibit an ethic of concern.
d To provide opportunity for the development of the abilities and talents of learners.

(16) Who is (are) always the most important person(s) around whom everything revolves in any teaching partnership?

a The parents.
b The learners.
c The educators.
d Members of the organised teaching profession.

(17) Complete the following table by giving one example from practice in column 3:

Example:

Concept	Person	One example from practice
Professional status	Educator	Performs an essential service by teaching and educating the learners of a country.
Professional responsibility	Mathematics educator	Thorough preparation with regard to the tutorial matter as well as ongoing control and report back with regard to homework for Mathematics. (Any other relevant information.)
Professional duty	Principal	Personal meetings which focus on professional development of teachers. (Any other relevant information.)
Professional dignified behaviour	Science educator	Respect for learners in the Science classroom. (Any other relevant information.)

(18) Read the following statements carefully. Then make a cross in the block opposite the most correct statement.

(a) Educators

- ✓determine the professionalism of their station through their behaviour inside and outside the school
- can be replaced by computers
- need only display a professionally dignified image at school while busy teaching

(b) Educators

- only have a duty towards the Department of Education as their employer
- ✓are teaching partners in every relationship in which they are involved
- only have a responsibility in respect of the education of learners

(c) The professional responsibility of the educator towards learners implies that they should

- ✓protect learners against abuse, neglect or humiliation at school
- find a solution to learners' problems at home
- revoke learners' duties and responsibilities when learners are ill

(19) Which statement with regard to appraisal of educators is INCORRECT?

a The main objective of appraisal is to measure the development of educators.
b Appraisal comprises interaction with appraisal panels.
c Appraisal comprises also self-evaluation.
d Appraisal comprises no appraisal by a colleague.

(20) Which statement is INCORRECT?

a In 1998 the Education Labour Relations Council (ELRC)approved a management model for the appraisal of educators in the work situation.
b Appraisal has nothing to do with the annual appraisal for salary adjustments.
c Educators have to analyse their performance in terms of goal achievement on a continuous basis.
d Only teachers from different schools work together to find solutions to problems in practice.

(21) The main aim of the Education Labour Relations Council (ELRC) is . . .

a to resolve disputes.
b to facilitate negotiations concerning salaries and general working conditions between educators and their employers
c to discipline educators.
d to promote mediation and advisory arbitration.

(22) Which ONE of the following statements is INCORRECT?

a. Certain criteria are used to assess the educators' professional capabilities.
b. The criteria to assess educators' professional capabilities are classified in two main groups.
c. A separate set of criteria has been developed for heads of departments, principals and educators.
d. None of the above.

(23) Which ONE of the following statements is INCORRECT?

The purpose of appraisal with regard to educators is to . . .
a assess the professional development of educators.
b be an instrument for assessing the professional progress of educators.
c release information regarding educators' professional development to school governing bodies and management on regional or provincial level.
d assess the educator for an annual individual salary increase.

(24) Create a table and draw up a list of unethical, unprofessional behaviour of teachers in your school or of teachers when you were a learner in school in the first column. Indicate the consequences of the behaviour in the next column. Explain proposals to change the unprofessional behaviour into professional behaviour in the last column.

Open memorandum. Opportunity for critical thinking.

Hint: Use the professional code of conduct for examples. Refer to the example stated on page 129 of the study guide.

STUDY UNIT 11

(1) How does an organisational structure come into existence?

The need to organise exists because groups work together in order to maintain a joint task of common interest. People and structures are arranged and ordered in a specific pattern to form the basis of organisation. An organisational structure is thus established. The organisational structure is a resource which helps one to achieve the common goal.

(2) What makes the effective functioning of a country's education system possible?

The teaching profession cannot act on its own. Isolation leads to stagnation. The teaching profession has to work in partnership with other professional organisations to make the effective functioning of a country's education system possible.

(3) In what way can educators who, on a daily basis provide education instruction to learners daily in the classroom give input in education planning, decision-making and policy?

If an educator is a member of a teachers' association he/she can have a say at national level where he/she can make an input in education planning, decision making and policy.

(4) Describe the concept of *organised teaching profession*.

The organised teaching profession includes the various teaching councils, teachers' associations and teachers' unions that look after the common interests of educators, such as status, professionalism and work conditions.

(5) The concept *organised teaching profession* refers *inter alia* to ...

a departmental control over the teaching profession.
b the organising of strikes by educators.
c the establishment of a national education department.
d activities in an organised way regarding to conditions of service as well as the professional interests of educators.

(6) What does the organised teaching profession comprise of?

The organised teaching profession consists of a teaching council (SACE), teachers' associations and teachers' unions.

(7) Name any five functions of the organised teaching profession.

- It promotes professional behaviour.
- It negotiates about service benefits.
- It represents members in labour disputes.
- It provides information to members about matters of general and academic interest.
- It promotes the education interests of learners.
- It promotes skill and knowledge through personnel development.
- It provides professional advice.
- It makes reports about teaching matters public.

(8) Name a common function of teaching councils, teachers' associations and teachers' unions.

To promote service benefits and the professional interests of the educator.

(9) Name four objectives of teaching councils.

- They promote respect for teaching and the teaching profession as well as people in the profession.
- They promote the broad professional interests of the teaching profession.
- They continuously improve the quality of the practice.
- They promote cooperation by protecting the interests of the community with regard to service by the teaching profession.
- They improve the quality of professional training.
- They improve the quality of the working life of educators by using recognised bargaining procedures, among other things, and striving to establish satisfactory structures for this purpose.

(10) Name five functions of teaching councils.

- They coordinate and process presentations of teachers' associations and other interested institutions and cooperate with such associations or institutions.
- They determine registration and annual fees for the financing of their activities.
- They serve as a mouthpiece for teachers' associations at national level.
- They deal with professional registration of educators, in other words the admission to the teaching profession. Registration of educators makes professional control of teaching possible and recognises its unique character. It requires appropriate specialised teacher training.
- They exercise professional discipline.
- They formulate a professional code of conduct.

(11) Name five functions of teachers' associations.

- They amalgamate their members and act for them in promoting their interests and those of teaching in general.
- They coordinate and process representations to the national body, to obtain participation at the national level.
- They act as a bargaining mechanism for their members by using recognised channels for bargaining.
- They promote the professional status of educators.
- They maintain high standards in the training of teachers.
- They maintain a fundamentally justified code of honour.
- They bargain for remuneration of their members.
- They bargain for the occupational rights of their members.
- They are legal bodies that can defend themselves and their members or can make claims on their behalf or their members' behalf.
- They strengthen underlying professional relationships.
- They make their members active partners of the teaching authority at all levels with regard to decision-making processes, teaching planning and teaching policy.
- They act as a mouthpiece for their members.
- They coordinate the professional activities of educators.
- They promote the professional behaviour of educators while taking learner's interests into consideration.

(12) What is the most important difference between teachers' unions and professional teachers' associations?

The most important difference can be found in their actions, aspirations, ideals and ideology.

A teachers' union campaigns to achieve and maintain control in work matters such as labour provision, remuneration and conditions of service, but also gets involved in broader matters such as state authority and is at the foreground in the political and economic struggle with the state. A union believes that it is the state's responsibility to make provision for all facets of teaching and that it is the right and even the obligation of educators and learners to protest in order to ensure that the state accepts and meets its responsibility.

A professional teachers' organisation, on the other hand, does not advocate party-political affiliation. It promotes professional ethics and the concerns of the teaching profession.

(13) Give two examples of teachers' unions in South Africa.

- The *Suid-Afrikaanse Onderwysersunie (SAOU)*
- The South African Democratic Teachers' Union (SADTU)

(14) The National Professional Teachers' Organisation (NAPTOSA) is a mouthpiece for its members at . . .

a local level.
b national level.
c regional level.
d provincial level.

(15) Compare the objectives of SADTU with those of NAPTOSA.

- **SADTU:** SADTU's position is that unionism and professionalism are not opposing ideas. SADTU accepts professionalism as an important principle in education. However, it rejects the notion that it is unprofessional to fight for material interests by means such as striking.
- **NAPTOSA:** According to the constitution of NAPTOSA, teaching is a unique profession and this should be confirmed by giving educators appropriate professional status as well as by applying a professional code of conduct. A high premium is thus placed on the professionalism of all educators.

(16) The first fully-fledged <u>teachers' union for Afrikaans-speaking teachers</u> was established in July 1996 and is known as:

a The South African Democratic Teachers' Union (SADTU).
b The National Teacher Unity Forum (NTUF).
c The National Professional Teachers' Organisation of South Africa (NAPTOSA).
d *Die Suid-Afrikaanse Onderwysersunie (SAOU)*.

(17) Should there be more than one teachers' body in the organised teaching profession? Give your opinion.

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(18) What would be the advantages and disadvantages of one central teachers' body?

This is an open memorandum question. You should reveal your own critical ideas about conclusions and evaluations. Critical thinking is important.

(19) Write a short paragraph in which you explain the following statement:

Included in the meaning of the term "organised teaching profession" are activities such as those implicit in an organisational context, which promote the importance of service conditions and foster the professional interests of educators.

The organised teaching profession as teaching partner consists of teaching councils, teachers' associations and teachers' unions that promote the professional interests of the members in a structured manner. These role players take care of the broad interests of the teaching profession and aim to handle educators' problems, worries, complaints and misgivings as well as positive suggestions. Through organisations an organisational structure is established which helps to achieve a common goal. The main role and function of the organised teaching profession is to take care of the interests of educators in a goal-directed manner.

The following are functions of the organised teaching profession:

- It promotes professional behaviour.
- It negotiates about service benefits.
- It represents members in labour disputes.
- It provides information to members about matters of general and academic interest.
- It promotes the education interests of learners.
- It promotes the skills and knowledge of educators through personnel development.
- It provides professional advice.
- It makes reports about teaching matters public.

(20) At what levels does the organised teaching profession have a voice?

- **Local level**. Educators form number of schools can organise themselves at local level to form a branch of the teachers' association.
- **Regional or provincial level.** Various branches of a teachers' association function at this level.
- **National level.** The South African Council for Educators (SACE) and organisations like NAPTOSA, SADTU and SAOU function at national level.

(21) By what was the organised teaching profession characterised during the mid-1980s?

In the teaching profession, the mid-1980s were characterised by, among other things, a growing division between existing teachers' organisations, an escalation of new teachers' organisations, and also by an intense struggle for and consequential debate on the establishment of a single, non-racial, national teachers' organisation.

(22) What gave rise to the Harare conference in Zimbabwe?

Since 1988 teachers from the black, coloured and Indian population groups in particular have been heavily involved in the struggle for liberation. The process of educator unification as part of the mass democratic movement gave rise to the Harare conference in Harare, Zimbabwe.

(23) Which two main groups took the lead in the Harare debate?

The "progressive" or "emergent" teachers' organisations and the "established" or "traditional" teachers' organisations, took the lead in the debate on the establishment of a single, national teachers' organisation.

(24) Name two main points of discussion that featured during the Harare debate.

- the forming of a single, national teachers' organisation
- the structure of the organisation

(25) What was the position of the progressive teachers' organisations in the Harare debate?

The progressive organisations aligned themselves with the workers' struggle and concentrated on working conditions such as long working hours, inadequate job security and victimisation, as necessitating the establishment of a teachers' union which would put mechanisms such as arbitration, mass demonstrations and strikes at the disposal of educators. The progressive organisations recognised that educators, in their professional capacity, are responsible for the learners, but regarded this responsibility as secondary to political, economic and ideological considerations.

(26) What was the position of the established, traditional teachers' organisations in the Harare debate?

The established teachers' organisations preferred a professional teachers' organisation which would promote professional ethics and the concerns of the teaching profession. According to the established teachers' organisations, an educator's primary responsibility is the proper development of the learner, a duty which he/she as a professional should under no circumstances neglect.

(27) Which organisation was established as a result of the Harare conference and what mandate was this organisation given?

As a culmination of more than two years of debate, SADTU was established during the national congress on 6/7 October 1990 under the auspices of the NTUF. It s mandate was to function as a single, national teachers' organisation.

(28) Briefly discuss the implications of the Harare debate for organised teaching profession.

The debate led to the division of the organised teaching profession into two primary groups, with SADTU (more union-oriented), on the one hand, and NAPTOSA and UTASA (more professional-oriented) on the other.

(29) Which three organisations are at present looking after the interests of the organised teaching profession at national level?

- the National Professional Teachers' Organisation (NAPTOSA)
- the *Suid-Afrikaanse Onderwysersunie (SAOU)*
- the South African Democratic Teachers' Union (SADTU)

(30) What is the main difference in approach between the two teachers' unions in South Africa?

- **SADTU** believes that it is responsibility of the state to ensure that provision is made for all aspects of education, and that it the right and even duty of educators and learners to protest to ensure that the state carries out its responsibility, even if this means that the strategies used are not always in the best interest of the learner.
- **SAOU** does not differ from SADTU in terms of its rights to use industrial action but believes that its clients prevent it from acting irresponsibly when negotiating their rights. SAOU keeps in mind that if education comes to a standstill, learners would suffer the consequences and parents would be alienated from the school.

(31) Distinguish between the two definitions of professionalism given by SADTU.

According to SADTU, there are two definitions of professionalism, namely the traditional and democratic definitions. The traditional view of professionalism for educators is that they must uphold the dignity of the profession. SADTU believes in unionising for democratic professionalism. Democratic professionalism recognises the educator's' responsibility to provide an education of the highest standard to all learners, but also recognises his/her democratic "right" to bargain for improved benefits.

(32) What does SADTU strive for in particular?

SADTU believes in unionising for democratic professionalism. Democratic professionalism recognises the educator's responsibility to provide an education of the highest standard to all learners, but also recognises his/her democratic "right" to bargain for improved benefits

(33) Read the following statements and make a cross in the block opposite the incorrect statement.

- SACE was created to promote the professionalisation of the teaching profession.
- SACE's mission is to increase the status of the teaching profession.
- SACE is working to promote the professional behaviour of educators.
- ✓SACE is not undertaking to make a professional code of conduct available.

(34) Why should SACE include disciplinary steps in its constitution?

To discipline the educator who is guilty of gross professional misconduct. The Council has the power to remove the educator's name from the register. This means that the educator can no longer teach in a public school in South Africa.

(35) Which ONE of the following statements is INCORRECT?

a All educators have to register with SACE before appointment to a teaching post.
b. SACE has the power to advise the Minister on any relevant aspect.
c. SACE's mission is to enhance the status of the teaching profession.
d. SACE is not involved in establishing committees.

(36) To help you master the concepts used in study unit 11 you can complete the following table using the information contained in the preceding sections. Make sure that you understand everything.

CONCEPT	MEANING
Organised	To work together in groups.
Organisation structure	Arranging people and structures in order to maintain a joint task of common interest.
Teaching profession	The profession (occupation) the educator practises as a professional person. It is a profession because it has characteristics that could be applied to a profession.
The organised teaching profession	The organised teaching profession consists of a number of organisations like teaching councils, teachers' associations and teachers' unions that are important role players in teaching. Through these organisations the common interests of the educator, such as status and professionalism, are promoted.
Teachers' association	A teachers' association is an association for teachers that primarily aims to render service to its members. They are voluntary associations with their own constitution and organisational structure. Teachers' associations strive towards professional service.
Teaching councils	Teaching councils usually comprise representatives from teachers' bodies such as associations and unions, through which they participate in deliberations at national level.
Cooperative teachers's unions	Unions that have almost the same objectives as professional teacher associations.
Role players	Any person, persons or organisations involved in education.
Negotiation in teacher context	Negotiations on education.
Non-cooperative teachers' unions	Non-cooperative unions are unions whose objectives are not the same as the criteria for a profession.
Mouthpiece	To act as mediator in a certain matter. In a teaching context teachers' unions act as the forum that informs the authorities of the needs of its members.
Progressive teachers' organisations	Also known as emergent teachers' organisations. They participate actively in the freedom struggle in all areas.
Traditional teachers' organisations	Also known as established teachers' organisations. Prefer using negotiation to promote the interests of their members.

(37) Complete the following table on abbreviations in the educational context. Consult study units 9 to 12 in this regard.

Abbreviation	What the abbreviation stands for
ATASA	African Teachers' Association of South Africa
COTEP	Committee on Teacher Education Policy
NAPTOSA	National Professional Teachers' Organisation of South Africa
NTS	Natal Teachers' Society
ELRC	Education Labour Relations Council
SADTU	South African Democratic Teachers' Union
SACE	South African Council for Educators
SATU	The South African Teachers' Union
TTA	Transvaal Teachers' Association
TO	Transvaalse Onderwysersvereniging
UTASA	United Teachers' Association of South Africa
NTUF	National Teacher Unity Forum
TASA	Teachers' Association of South Africa
OVSOV	Oranje Vrystaat Onderwysersvereniging

(38) Which ONE of the following statements is CORRECT?

The South African Council for Educators (SACE) ...

a. is a statutory body.
b. is not a statutory body.
c. has the power to appoint educators.
d. has members representing three stakeholders.

(39) The power of the teaching profession lies in ...

a mass demonstrations and stay-aways.
b the expertise of the professional practitioner and his/her willingness to make this available to the community in a selfless manner.
c a national education ministry and department of education.
d trade unions and teacher associations.

Best wishes

Mr SJ Rapeta

Dr I Lumadi

Dr CF Steinmann

Prof J Nyoni