Communications Law
The Constitutional Right to Freedom of Expression in SA
Recap Study Unit 2

- Freedom
- Communication
- Communication Law
- Theories justifying freedom of expression
  - Theory of individual self fulfilment
  - Theory of sound and rational judgment
  - Theory of open discussion as part of democratic process
  - Theory of human dignity
Discuss the limitations clause in terms of Section 36 of the Constitution
Define Section 16 of the Constitution (Right to Freedom of Expression)
Discuss the scope of the right to freedom of expression
Discuss the role of the press in South Africa and whether Section 16 of the Constitution applies to the press
Discuss the institutional independence of the press and whether it is guaranteed by Section 16 of the Constitution
Discuss the functions of the Public Broadcaster in terms of the Broadcasting Act 4 of 199 as amended
Discuss the functions of the Independent Communications Authority of South Africa (ICASA)
Define the Code of Conduct for Broadcasting Services as set out in the Independent Broadcasting Act and summarise its main provisions
Discuss the scope of the right of broadcasting in light of Section 16 of the Constitution
Discuss the functions of the Films and Publications Board as created by the Publications Act 42 of 1974 as amended
Discuss in short the scope of the right to freedom of expression as it relates to other forms of media such as films, DVD's and public entertainment
Briefly discuss whether Section 16 of the Constitution protects arts and culture, sport, telecommunications and information technology
Discuss the right to receive and access information in terms of Section 16(1)(b) of the Constitution
Discuss the right to academic freedom and freedom of scientific research in terms of Section 16(1)(d) of the Constitution
16. Freedom of expression

(1) Everyone has the right to freedom of expression, which includes -

(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas;
(c) freedom of artistic creativity; and
(d) academic freedom and freedom of scientific research.
Who is “everyone”? 

- Individuals – citizens, aliens, youth etc 
- Juristic persons – company’s, organisations, media etc
Scope of freedom

“freedom of expression” – must be widely interpreted

- Includes oral & written speech, freedom of the press, freedom of broadcasting, freedom of entertainment, freedom of entertainment, freedom of artistic creativity, academic freedom, telecommunications freedom etc
What about symbolic speech?

- Eg: burning of the flag
Limitations of section 36

36. Limitation of rights

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

(a) the nature of the right;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation;
(d) the relation between the limitation and its purpose; and
(e) less restrictive means to achieve the purpose.

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

- SABC regulated by Broadcasting Act
- Function to ensure independent & fair broadcasting
- Ensure information received & imparted
- Protect scientific & artistic research
ICASA

- Independent Communications Authority of South Africa
- Single independent body to regulate broadcasting and telecommunications in SA
- Intended to be impartial and to perform without political or commercial interference
Code of Conduct for Public Broadcasters

- May not broadcast material which is:
  - Indecent, obscene or offensive to public morals or religious convictions or feelings of any section of population
  - Likely to prejudice the safety of the State
  - Likely to prejudice public order or relations between sections of the population