

CSL2601

(480999) October/November 2013

CONSTITUTIONAL LAW

Duration 2 Hours

100 Marks

EXAMINERS :

FIRST

MR DT MAILULA

SECOND .

MISS MS MOOKI

Closed book examination.

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This paper consists of five (5) pages.

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS:

1. Answer all FIVE questions.
2. Question 1 must be answered on a mark-reading sheet.
3. Do not separate the subsections of the questions (e.g. 2.1 and then 3.2). If you would like to return to a question later, leave enough space to answer the question.
4. Refer to relevant case law or authority to support your answers.
5. Note the marks allocated to each question, and ensure that your answer is in line with this mark. That is, do not write a lengthy answer if the question counts only a few marks and *vice versa*.

QUESTION 1

Indicate whether each of the following statements is TRUE or FALSE by selecting either 1 for TRUE or 2 for FALSE.

- 1 1 According to section 83 of the 1996 Constitution, the president is the head of the national executive; therefore all his powers involve the exercise of executive authority (1)
- 1 2 As South Africa adopted a German model of integrated federalism, German law is comparative law in this regard. South African courts are obliged to consider German law as a primary source of South African law when interpreting any legislation on federalism (1)

TURN OVER

1.3 Read the following statement and indicate whether it is true or false

In 2011 the South African Police Services (SAPS) entered into a lease agreement with a certain Mr Robert Shabane in respect of a certain building in the city centre of Pretoria to accommodate its staff

The relationship that flows from the lease agreement between SAPS and Mr Shabane is regulated by public law because the state is involved in the relationship. (1)

1.4 A supreme constitution is exactly the same thing as an inflexible constitution (1)

1.5. To enable members of parliament to perform their functions without hindrances, parliamentary privileges enjoy immunity from judicial review (1)

1.6 In a constitutional law relationship, the state is always involved and it always exercises state authority (1)

1.7 As the president of the Republic of South Africa is a member of the National Assembly, he is required to present a state of the nation address annually in parliament (1)

1.8 In the case of *Minister of Justice and Constitutional Development v Chonco*, the Constitutional Court held that presidential powers can be transferred to a cabinet minister (1)

1.9 In accordance with the decision of *Executive Council of the Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC), parliament cannot delegate its legislative powers to a provincial legislature. (1)

1.10. According to the Constitution of 1996, the president can refer a bill back to the National Assembly for reconsideration only if a procedural defect had occurred in the legislative process. (1)

1.11 The principle of co-operative governance means that the national sphere of government has an overarching role in regulating the relationships between the three spheres of government (1)

1.12. The 1996 Constitution of South Africa is an inflexible constitution and the special procedures and special majorities for its amendment are laid down in section 74 of the Constitution (1)

1.13. The unitary form of government means that state authority is centralised in the national government (1)

1.14. As a superior court, the Supreme Court of Appeal is the final court of appeal in all constitutional matters (1)

- 1.15. According to the provisions of section 165(1) of the 1996 Constitution, the judicial authority of the Republic is vested in the courts and this means that the judiciary has a function to enforce the law (1)
- 1.16 In *South African Association of Personal Injury Lawyers v Heath and Others* 2001 (1) BCLR 77 (CC), it was held that the appointment of a judge as a head of a special investigating unit constituted an infringement of the principle of judicial independence because the judge was performing executive functions, in the special investigating unit, which are inappropriate to the central mission of the judiciary (1)
- 1.17. Under the current constitutional dispensation in South Africa, local government is a public body exercising powers delegated by the national and provincial sphere of government (1)
- 1.18. In *President of the Republic of South Africa v South African Rugby Football Union* 1999 (10) BCLR 1059 (CC), the Constitutional Court held that due to the president's failure to exercise his power to appoint a commission of enquiry personally, the president abdicated his responsibilities in contravention of section 84(2)(f) of the 1996 Constitution (1)
- 1.19. In South Africa, the Westminster system of parliamentary sovereignty was already replaced with constitutional supremacy way back in 1983 (1)
- 1.20. The most important function of parliament is the control function, namely to scrutinise or oversee executive function. (1)
(20)

QUESTION 2

- 2.1 In *Moutse Demarcation Forum and Others v President of the Republic of South Africa and Others* 2011 (11) BCLR 1158 (CC), the Constitutional Court held that "the South African Constitution contemplates a democratic society that is participatory in nature" It went further to indicate that the Constitution contemplates the meaningful involvement of the public at every stage of the law making process

With reference to relevant sections of the Constitution and case law, critically discuss the merits of this statement In your discussion, refer to the meaning, nature, scope and content of the duty to facilitate public participation Further indicate the extent to which this right has been implemented in practice (if at all). (15)

- 2.2 A federal system of government is characterised by the distribution of government authority among the different spheres of government Explain the basic features of the federal form of government (5)
(20)

QUESTION 3

3.1 Read the following question and answer the question that follows

In a parliamentary session in South Africa Mr Molapo, a member of an opposition party in Parliament, alleges that certain members of the ruling party are spies and puppets of the ruling Zanu PF in Zimbabwe. As a result of these allegations, Parliament suspends him for two weeks. Mr. Molapo is furious and challenges Parliament's decision to suspend him in court, alleging that it has violated a number of his fundamental rights. Counsel for the Speaker of the NA argues that in suspending Mr Molapo, Parliament exercised its parliamentary privilege to control its own affairs, and the exercise of parliamentary privileges is not subject to judicial review.

Do you agree with the speaker that parliamentary privileges are not subject to judicial review? Explain with reference to authority (10)

3.2 It is universally accepted in modern democracies that parliament cannot attend to every single task that it is enjoined to perform, particularly when it comes to making laws aimed at regulating the conduct of its subjects. Parliament cannot foresee every single occurrence that may necessitate regulation and therefore usually drafts laws in skeletal form. In the light of the above statement, briefly discuss what you understand by the concept of delegation and state whether parliament can delegate its function to the executive

Substantiate your answer by referring to case law (10)
(20)

QUESTION 4

4.1 Name the two houses of Parliament in South Africa and give reasons why parliament consists of two houses (5)

4.2 What majorities from the two houses of parliament are required to amend section 40 of the constitution? (5)

4.2 In the event of conflict between national and provincial legislation dealing with a Schedule 4 matter, which law takes precedence and under what circumstances? Discuss with reference to relevant provisions of the Constitution. (5)

4.3 Explain the distinction between functional and personal independence of the judiciary as envisaged in the 1996 Constitution of the Republic of South Africa. (5)
(20)

TURN OVER

QUESTION 5

- 5.1 Critically discuss whether local government is not an “administrative handmaiden” of the other spheres of government. (10)
- 5.2 In the judgment of *National Treasury and Others v Opposition to Urban Tolling Alliance (OUTA) and others* {CCT 38/12 ZACC 18}, Moseneke DCJ in par 68 held that “another consideration is that the collection and ordering of public resources inevitably calls for policy-laden and polycentric decision-making Courts are not always well suited to make decisions of that order. It bears repetition that a court considering the grant of an interim interdict against the exercise of power within the camp of Government must have the separation of powers consideration at the very forefront ” In the light of this dictum.
- (a) Briefly explain the principle “separation of powers” and indicate its purpose in modern democracies (5)
- (b) Differentiate between absolute and partial separation of powers and indicate which model South Africa has adopted In your answer, refer to relevant sections of the 1996 Constitution and case law (5)

TOTAL: {100}