

**CSL2601**

( 492145)

May/June 2013

**CONSTITUTIONAL LAW**

Duration · 2 Hours

100 Marks

**EXAMINERS**FIRST  
SECONDMR DT MAILULA  
MISS MS MOOKI

Closed book examination.

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**This paper consists of six (6) pages plus instructions for the completion of a mark-reading sheet.**

**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 (eg 2.1 and then 3.2, etc). 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 or not each of the following statements is **TRUE** or **FALSE** by selecting either 1 for **TRUE** or 2 for **FALSE**.

- 1 1 An amendment of s1 of the Constitution in South Africa requires a supporting vote of at least five provinces.

- 1 True  
2 False

TURN OVER

- 1 2 Common law as a source of constitutional law is superior in status to customary law.
- 1 True  
2 False
- 1 3 The doctrine of separation of powers entails the division of state authority among the spheres of government
- 1 True  
2 False
- 1 4 Constitutional law regulates, amongst others, relationships between the organs of state and individuals
- 1 True  
2 False
- 1 5 The Public Protector is empowered to investigate any conduct of the judiciary that is alleged to be improper
- 1 True  
2 False
- 1 6 South Africa has the discretion to develop its own unique doctrine of separation of powers.
- 1 True  
2 False
- 1 7 The National Council of Provinces must "ensure that provincial interests are taken into account in the national sphere of government by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces"
- 1 True  
2 False
- 1 8 A National Commissioner of the Police Service is appointed for a term of four years, which is renewable for two additional terms. It must be a woman or a man who is a South African citizen, and a fit and proper person with knowledge of or experience in administration or the provision of public services
- 1 True  
2 False

1 9 A federal system of government provides only for the principles of co-operative government procedures, for settling intergovernmental disputes, and for provincial participation in the national parliament

- 1 True
- 2 False

1 10 In a unitary system, state authority is centralised in one sphere

- 1 True
- 2 False

1 11 It is because of the principle of separation of powers that parliament cannot delegate to the executive its powers of making original legislation

- 1 True
- 2 False

1 12 All categories of prisoners in South Africa who are adults and citizens are entitled to register and vote in the national elections.

- 1 True
- 2 False

1 13 It is a privilege of members of parliament to say anything in parliament without fear of being held liable in a court of law, and it serves to protect parliament from outside interference This means that parliamentary privileges are not subject to judicial review under the new constitutional dispensation

- 1 True
- 2 False

1 14 In *Ex parte President of the RSA. In re Constitutionality of the Liquor Bill* it was stated that "any Bill whose provisions in substantial measures fall within a functional area listed in Schedule 4 of the Constitution, must be dealt with under section 76 of the Constitution"

- 1 True
- 2 False

1 15 As a member of parliament, the president of the Republic of South Africa is required to present a state-of-the-nation address in parliament annually.

- 1 True
- 2 False

- 1 16 In *Glenister v The President of the Republic of South Africa* it was held that the Court cannot intervene in the legislative process before a particular legislation is deliberated in parliament
- 1 True  
2 False
- 1 17 The Constitutional Court in *Doctors for Life International v Speaker of the National Assembly* held that public involvement is one of the essential features of participatory democracy in the law-making process, which had long been established under the system of customary law through *imbizos* or *lekgotlas*
- 1 True  
2 False
- 1 18 In *Premier of the Western Cape* the Court held that if the organs of state are in dispute, they should avoid litigating against each other.
- 1 True  
2 False
- 1 19 The provincial legislatures have exclusive legislative authority in relation to matters which fall under Schedule 4 of the Constitution
- 1 True  
2 False
- 1 20 The local sphere of government exercises a delegated authority from both the provincial and national spheres of government.
- 1 True  
2 False

[20]

**QUESTION 2**

- 2 1 Differentiate between direct and representative democracy. (4)
- 2 2 List the features that are regarded as indispensable to a democratic government (4)
- 2 3 The South African Constitution 1996 is classified as one of the most supreme and inflexible constitutions. With reference to this statement and relevant provisions of the Constitution, discuss whether or not the South African Constitution can be amended, and if so, what is the procedure? (12)

[20]

TURN OVER

**QUESTION 3**

- 3 1 What do you understand by the term "co-operative government" in its constitutional sense? (5)
- 3 2 The Minister of Rural Development adopts a policy on the regulation of land distribution in South Africa, which gives the national department the sole discretion to ensure its implementation without consulting the other two spheres of government and others who are directly affected by the policy

With reference to the above, discuss the importance of intergovernmental relations in exercising executive state authority. (5)

- 3 3 Do the following courts have jurisdiction to hear constitutional matters and if so, to what extent? Discuss the
- (a) Supreme Court of Appeal (SCA) (3)
- (b) High Courts (4)
- (c) Magistrates' Courts (3)
- [20]

**QUESTION 4**

- 4 1 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 require regulation and, therefore, usually drafts laws in skeletal form. In the light of the above statement, briefly discuss what you understand by the term "delegation of legislative authority" and discuss whether or not parliament may delegate its functions to the
- a) executive (10)
- b) provincial legislatures (5)
- 4 2 In September 2008, the then State President Thabo Mbeki was recalled by the African National Congress, the party to which he belonged, on the basis that he interfered with the prosecution of his deputy, Mr Jacob Zuma. With reference to authority, state whether or not the ANC had any constitutional authority to remove the State President from his office, and if so, name the grounds upon which it could do so. (5)
- [20]

TURN OVER

**QUESTION 5**

- 5 1 Explain the importance of judicial review and its relationship with the concept of the "rule of law". (4)
- 5 2 What are the factors that are taken into account in order to determine whether or not the local government is a "sphere" of government? (5)
- 5 3 It is alleged that Judge President of the Cape High Court John Hlophe tried to improperly influence two judges of the Constitutional Court in a matter that involved Mr Jacob Zuma, the president of the Republic of South Africa. In the light of this contention, discuss the principle of the "personal independence" of judges (5)
- 5 4 The recent re-election of President Barak Obama of the United States of America to hold office for another term of four years was received with great jubilation and seen as a victory for Africa because he is of Kenyan descent. In this regard, distinguish between the regional and proportional electoral system. In your answer, you must indicate the electoral system that South Africa follows (6)
- [20]**

**Total: {100}**

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

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For use by examination invigilator  
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**IMPORTANT**

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
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**BELANGRIK**

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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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