

CSL201M

October/November 2008

CONSTITUTIONAL LAW

Duration: 2 hours

100 marks

EXAMINERS:

FIRST: MS SR BUDHU
MR T MASEKO
MS I MOODLEY
MR D MAILULA
SECOND: MR J JOBODWANA

This paper consists of two (02) pages**PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS:**

- 1 ANSWER ALL THE QUESTIONS.**
- 2 DO NOT SEPARATE THE SUBSECTIONS OF THE QUESTIONS (EG S(A) THEN 1(B) ETC. IF YOU WOULD LIKE TO RETURN TO A QUESTION LATER, LEAVE ENOUGH SPACE TO ANSWER THE QUESTION.**
- 3 REFER TO RELEVANT CASE LAW OR AUTHORITY TO SUPPORT YOUR ANSWERS.**
- 4 PAY ATTENTION TO THE MARKS ALLOCATED AND ADJUST YOUR ANSWER ACCORDINGLY.**

QUESTION 1

- a. A state representative of the newly formed state of Krela comes to see you for legal advice. The people of Krela would like to become a democratic society but are not sure what a democracy consists of. Explain to the state representative the full details re this concept. (15)
 - b. What do you understand by the terms 'separation of powers' and 'checks and balances'? Discuss in detail. (10)
- [25]**

[TURN OVER]

QUESTION 2

Imagine that you are the newly appointed political adviser to the State of Suppression which is experiencing severe political turmoil and human rights abuses because the national government has unilaterally taken over the running of the State. The time for change is imminent and you have been asked to map the way forward in terms of the **system of government** that should be adopted. What would your recommendations be and why? [25]

QUESTION 3

- a. Why are the principles of ministerial accountability and parliamentary oversight over the executive central to the Constitution? (5)
 - b. Briefly discuss the types of parliamentary control mechanism that are in place to ensure that the executive acts in accordance with the Constitution. (15)
 - c. Briefly mention the various roles that the courts have to play under the new dispensation. (5)
- [25]

QUESTION 4

- a. Briefly discuss whether parliamentary privileges are subject to judicial review under the new Constitution. Refer to the *De Lille* case in your answer. (10)
 - b. Briefly discuss the reasons why public participation is fundamental to good governance. (15)
- [25]

[100 MARKS]

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STAATSREG

Tydsduur: 2 uur

100 Punte

EKSAMINATORE:

EERSTE: ME SR BUDHU
MNR T MASEKO
ME I MOODLEY
MNR D MAILULA
TWEEDE: MNR J JOBODWANA

Hierdie vraestel bestaan uit twee(02) bladsye

NEEM ASSEBLIEF KENNIS VAN DIE VOLGENDE INSTRUKSIES:

- 1 BEANTWOORD AL DIE VRAE.
- 2 MOET NIE DIE ONDERAFDELINGS VAN DIE VRAE VERDEEL NIE (BV 1(A) DAN 1(B) ENS). AS U LATER NA 'N VRAAG WIL TERUGKEER LOS ASB GENOEG SPASIE OM DIE VRAAG TE BEANTWOORD.
- 3 VERWYS NA RELEVANTE HOFSAKE EN GESAG OM U ANTWOORDE TE ONDERSTEUN.
- 4 GEE AANDAG AAN DIE AANTAL PUNTE WAT VIR ELKE VRAAG TOEGEKEN WORD EN PAS U ANTWOORDE DIENOOREENKOMSTIG AAN.

Vraag 1

- a. 'n Vertoonwoordiger van die nuutgevonde Staat van Krela vra u om regsadvies. Die inwoners van Krela wil graag 'n demokratiese samelewing stig, maar is nie seker waaruit demokrasie bestaan nie. Verduidelik aan die verteenwoordiger die volle omvang van hierdie konsep. (15)
- b. Wat verstaan u onder die konsepte 'skeiding van magte' en 'wigte en teenwigte'? Bespreek breedvoerig. (10)

[25]**[BLAAI OM]**

Vraag 2

Verbeel u, u is die nuut aangestelde politieke raadgewer vir die Staat van Suppresie, wat tans geweldige politieke onrus en menseregte skendings ervaar, omdat die nasionale regering eensydiglik die bestuur van die staat oorgeneem het. Die tyd vir verandering is naby en daar word van u verwag om die weg voorentoe aan te dui in terme van die regeringstelsel wat aangeneem behoort te word. Wat sal u aanbevelings wees en hoekom? [25]

Vraag 3

- a. Hoekom is die beginsels van ministeriële aanspreeklikheid en parlementêre toesig oor die uitvoerende gesag sentraal tot die Grondwet? (5)
 - b. Bespreek kortliks die verskillende parlementêre meganisme wat beskikbaar is om te verseker dat die uitvoerende gesag in lyn met die Grondwet optree. (15)
 - c. Noem kortliks die onderskeie funksies wat die howe ingevolge die nuwe bedeling moet waarneem. (5)
- [25]

Vraag 4

- a. Is Parlementêre privilegie onderhewig aan geregtelike hersiening ingevolge die nuwe Grondwet? Bespreek kortliks en verwys na die *De Lille* saak in u antwoord. (15)
 - b. Bespreek kortliks die redes hoekom publieke deelname so belangrik is vir goeie beheer. (10)
- [25]

[100 PUNTE]