

CSL201M

October/November 2009

CONSTITUTIONAL LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

MS SR BUDHU
MS N NTLAMA
PROF AMB MANGUMR DT MAILULA
PROF WB LE ROUX

SECOND

This paper consists of three (3) pages**PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS**

- 1 ANSWER ALL THE QUESTIONS
- 2 DO NOT SEPARATE THE SUBSECTIONS OF THE QUESTIONS (EG QUESTION 1(a) THEN 1(b) THEN 1(c) ETC) IF YOU WOULD LIKE TO RETURN TO A QUESTION LATER, LEAVE ENOUGH SPACE TO ANSWER THE QUESTION IN THE CORRECT SEQUENCE
- 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

- 1 1 The Institute of Social Relations (ISR) approaches you for advice alleging that the judiciary does not have powers to dictate to the government how the budget should be spent in respect of the implementation of all human rights. In this regard, advise the Institute on the following
- 1 1 1 The division of state authority amongst the three branches of government as entrenched in the Constitution (9)
- 1 1 2 Whether judicial review is undemocratic? (5)
- 1 2 What is the distinction between public and private law and where does constitutional law fit into the legal system? (5)
- 1 3 Discuss at least three factors or values on which the Constitution is based or founded (6)
- [25]**

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QUESTION 2

- (a) Ms Genius is a member of Parliament representing the Freedom of Expression Party (FEP). During one of the parliamentary sessions, she was so enraged with the conduct of members of the Affirmative Action Congress (AAC) that she accused certain members of the AAC party of having been spies for the previous oppressive government. Pursuant to her outburst, she was suspended from Parliament for 30 days. Ms Genius is furious about her suspension and feels that a number of her fundamental rights have been violated by this suspension. As her legal advisor, advise Ms Genius on the following issues:
- (i) What are parliamentary privileges? (5)
 - (ii) Are parliamentary privileges subject to judicial review? Advise her with reference to case law. (10)
- (b) With reference to case law, explain when the President may refer a Bill to the Constitutional Court for a decision on the constitutionality of the Bill before it is adopted by Parliament. (10)
- [25]**

QUESTION 3

- (a) The criminal charges against the current President of South Africa have been dropped. Suppose a serving President is convicted of criminal charges during his term of office. Does the 1996 Constitution make provision for the removal of a serving President from office? If so, list the grounds on which such removal could take place? (6)
- (b) Minister Kreedy is the Minister of Trade and Industry. He receives a 2008 model, grey Mercedes Benz, as a gift from corporate clients who feel that he is the most competent Minister to sit as part of the national executive. Briefly explain whether the 1996 Constitution allows Kreedy to keep this motor vehicle. (6)
- (c) In October 2009, four of the current constitutional court judges will retire from the bench. This means that there will be four vacancies for the constitutional court. Briefly explain which bodies must be consulted before new appointments are made to the Constitutional Court. (3)
- (d) Briefly discuss the mechanisms that exist to ensure that the courts perform their functions in an impartial and independent manner. (10)
- [25]**

QUESTION 4

- (a) Parliament (with an ANC majority) and the Provincial Legislature of the Western Cape (with a DA majority) share concurrent legislative powers when it comes to the issue of education. A Bill is introduced in Parliament that will allow the Minister of Basic Education to create a national education policy for the entire country. The Minister can also require of a Provincial Member of the Executive Council (MEC) for Education to prepare a plan as to how the national policy can best be implemented in that Province. The DA challenges the constitutionality of the Bill as a violation of the federal autonomy.

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of the Province of the Western Cape and relies on an analogy between the Provinces of the RSA and the federal states of the USA. Explain to the supporter of the DA

- (i) what the main differences are between an "integrated" and a "divided" federal form of government, (5)
- (ii) which form of government South Africa adopted under the 1996 Constitution and why, (5)
- (iii) how the Constitutional Court is likely to respond to the challenge (refer extensively to the facts, legal question and judgment in *In re The National Education Policy Bill 83 of 1995*) (5)

(b) The National Education Act provides in section 10 that a standard school day is six hours long. The Provincial Schools Act of the Western Cape provides in section 20 that a standard school day is seven hours long. John Studiless and his friends refuse to attend school for seven hours. They approach you as lawyer to challenge the Provincial Schools Act and suggest that national legislation, being promulgated by Parliament, will always prevail over provincial legislation. Explain to them whether this is true. Refer in your explanation to

- (i) the difference between concurrent (Schedule 4) and exclusive (Schedule 5) provincial competences, (2)
- (ii) how a legislative conflict relating to education (a Schedule 4 matter) must be resolved in terms of section 146 of the Constitution, 1996 (8)

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TOTAL

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