

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

**CSL201-M**

Oct/Nov 2007

**CONSTITUTIONAL LAW**

Duration: 2 hours

100 marks

**EXAMINERS:**

FIRST: PROF ABM MANGU  
MS SR BUDHU  
MR T MASEKO  
SECOND: PROF WB LE ROUX

This paper consists of two (02) pages

**INSTRUCTIONS**

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING INSTRUCTIONS

- ANSWER ALL THE QUESTIONS
- DO NOT SEPARATE THE SUB-SECTIONS OF QUESTIONS (EG 2(A) THEN 1(B) THEN 4(C)). IF YOU WOULD LIKE TO RETURN TO A QUESTION LATER, LEAVE ENOUGH SPACE TO ANSWER THE QUESTION
- REFER TO RELEVANT CASE LAW OR OTHER AUTHORITY TO SUPPORT YOUR ANSWERS
- READ THE QUESTIONS THOROUGHLY BEFORE ATTEMPTING TO ANSWER THEM

**QUESTION 1**

1.1 Distinguish between the following constitutional concepts:

- (a) Divided and integrated forms of federalism - *can or gov.* (10) ✓
- (b) Rechtsstaat principle and parliamentary sovereignty (10) ✓  
*Rule of Law*
- 1.2 Briefly list the essential characteristics of a presidential system of government. (5)  
*WESTMINSTER (U.K.)*

[25]

[TURN OVER]

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**QUESTION 2**

- (a) According to Brynard there are a number of reasons why public participation at grass-root level is fundamental to the democratic decision-making process. In the light of this statement briefly discuss these reasons. (10) ✓
- (b) Temba and Krish live in the Sandton area. They have discovered that Parliament has passed section 21 of the Local Government Amendment Act which has a direct impact on the general valuations and rates of property in the Sandton area. They indicate that they had no knowledge of such an enactment nor were they given an opportunity to express their views on the matter. Advise Temba and Krish on whether they can challenge the constitutionality of such an Act and the basis on which such a challenge may be sought. Refer to relevant case law in your answer. (15) ✓  
[25]

**QUESTION 3**

Read the following passage and answer the questions that follow:

*Prior to 1996 the courts had recognised and acknowledged that intergovernmental cooperation was indispensable in a state where devolution of state authority had taken place.*

- (a) Identify the section(s) in the 1996 Constitution which confirm that intergovernmental cooperation forms an integral part of state activity. (2)  
40-41
- ⇒ (b) Briefly discuss the two cases that dealt with the issue of cooperative government prior to the 1996 Constitution coming into effect. (8)  
~~PRETORIA~~ WESTERN
- ⇒ (c) Briefly discuss the Western Cape decision which dealt with whether section 41(1)(g) had been violated or not. (15)  
[25]

**QUESTION 4**

- (a) Briefly explain what is meant by representative democracy (4) ✓  
ANDER  
STATE SYSTEM
- (b) List the eight parliamentary control mechanisms that act as a check on executive conduct. (16) ✓
- (c) List the core characteristics of the trias politica doctrine as mentioned by Carpenter. (5) ✓  
[25]

**[100 MARKS]**

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Okt/Nov 2007

**STAATSREG**

100 Punte

Tydsduur: 2 uur

**EKSAMINATORE:****EERSTE: PROF ABM MANGU****ME SR BUDHU****MNR T MASEKO****TWEEDE: PROF WB LE ROUX**

Hierdie vraestel bestaan uit twee bladsye

**Skenk noukeurige aandag aan die onderstaande instruksies:**

- Beantwoord al die vrae.
- Beantwoord die vrae in die volgorde wat hulle op die vraestel verskyn. Moenie onderafdelings van vrae van mekaar skei nie (bv 2(a), dan 1(b), dan 4(c)). As u later na 'n vraag wil terugkeer, laat genoeg spasie oop vir die beantwoording van die vraag.
- Haal toepaslike gewysdes (uitspraakreg) of gesaghebbende bronne aan om u antwoorde te steun.
- Lees die vrae goed deur voor u hulle probeer beantwoord.

**VRAAG 1**

1.1 Onderskei tussen die volgende grondwetlike begrippe:

(a) Verdeelde en geïntegreerde vorme van federalisme (10)

(b) Rechstaat-beginsel en parlementêre soewereiniteit (10)

1.2 Noem kortliks die onontbeerlike kenmerke van 'n presidensiële regeringstelsel. (5)  
[25]**[BLAAI OM]**

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**VRAAG 2**

- (a) Volgens Brynard is daar verskeie redes waarom openbare deelname op voetsoolvlak noodsaaklik is tydens die demokratiese besluitnemingsproses. Bespreek dié redes kortliks. (10)
- (b) Temba en Krish woon in die Sandton-omgewing. Hulle het pas uitgevind dat die Parlement artikel 21 van die Wysigingswet op Plaaslike Regering aangeneem het. Dié artikel het 'n direkte uitwerking op die algemene eiendomswaardasies en eiendomsbelasting in die Sandton-omgewing. Hulle voer aan dat hulle geen kennis van so 'n verordening gedra het nie, en ook nie die geleentheid gebied is om hul menings oor die saak te lug nie. Kan Temba en Krish die grondwetlikheid van so 'n Wet aanveg? Indien hulle kan, op watter gronde kan hulle so 'n aksie inbring? Verwys in u antwoord na toepaslike gewysdes (uitspraakreg). (15)  
[25]

**VRAAG 3**

Lees die paragraaf hieronder en beantwoord dan die vrae wat volg:

*Voor 1996 het die howe erken en toegegee dat tussenregering-samewerking noodsaaklik is in 'n staat waar devolusie (afwenteling) van staatsgesag plaasgevind het.*

- (a) Identifiseer die artikel(s) in die Grondwet van 1996 wat bevestig dat tussenregeringsamewerking 'n onlosmaaklike deel van staatsaktiwiteite is. (2)
- (b) Bespreek kortliks die twee sake wat die kwessie van samewerkende regering behandel het, voor die inwerkingtrede van die Grondwet van 1996. (8)
- (c) Bespreek kortliks die Wes-Kaapse uitspraak rakende die moontlike oortrede van artikel 41(1)(g). (15)  
[25]

**VRAAG 4**

- (a) Verduidelik kortliks wat die term verteenwoordigende demokrasie beteken. (4)
- (b) Noem die agt parlementêre beheermeganismes wat gebruik word om uitvoerende gedrag te monitor. (16)
- (c) Noem die hoofkenmerke van die trias politica-leerstuk wat Carpenter bespreek. (5)  
[25]

**[100 PUNTE]**

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