CSL2601 (469879) October/November 2014

CONSTITUTIONAL LAW

Duration: 2 Hours

100 Marks

EXAMINERS
FIRST
MR DT MAILULA
SECOND
MISS MS MOOKI

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

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 (eg 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. The Electoral Amendment Act No 18 of 2013 is an example of a primary source of constitutional law (1)

2. Constitutional law is that branch of law which regulates the unequal relationship between state organs and private individuals in circumstances where the state exercises state authority (1)

3. In order to pass a Bill which seeks to amend the foundational values in section 1 of the Constitution, at least a two-third majority of the members of the National Assembly and six provinces in the National Council of the Provinces must vote in favour of such a Bill (1)

4. Under the integrated model of federalism in South Africa the legislative and executive authority of the state is divided between the national, provincial and local spheres of government (1)

5. Although not expressly mentioned in the South African Constitution of 1996, case law in South Africa has confirmed that the doctrine of separation of powers is firmly entrenched in the Constitution (1)

6. As a member of the National Assembly, the President is entitled to exercise his parliamentary privilege to say anything in Parliament without fear that he will be held liable in a court of law (1)

7. In President of the Republic of South Africa v South African Rugby Football Union and Others 1999 (10) BCLR 1059 (CC) it was held that under no circumstances at all can a President be called upon to give evidence in court because of the special dignity of the President, his busy schedule and the importance of his work (1)

8. Section 79 of the 1996 Constitution of the Republic of South Afrca, dealing with the President's assent to Bills, entitles the President to veto legislation adopted by Parliament. (1)

9. The Final Report of the Public Protector on security at President Jacob Zuma's private residence at Nkandla qualifies as a primary source of constitutional law because the Public Protector is a chapter 9 institution supporting constitutional democracy (1)

10. The committee established by Parliament to consider the Public Protector's report on security upgrades at President Jacob Zuma's private residence at Nkandla is an example of Parliament's standing committee (1)

11. Parliament in the national sphere of government can delegate its function to pass a particular Act of Parliament to any provincial legislature or municipal council in South Africa (1)

TURN OVER
12. In the local sphere of government the legislative authority is vested in the Municipal Council and the executive authority is vested in the Mayor.

13. In *Fedssure v Greater Johannesburg Metropolitan Council* 1999 (1) SA 374 (CC) it was held that under our democratic constitutional dispensation, the local sphere of government is merely an administrative handmaiden of the national and provincial spheres of government.

14. In *South African Association of Personal Injury Lawyers v Heath* 2001 (1) BCLR 77 (CC) it was held that because of the doctrine of separation of powers, a sitting judge cannot be appointed as a head of the Special Investigating Unit (SUI).

15. Constitutional law is part of public law.

16. As a member of the National Assembly, the President must annually present a state-of-the-nation address in Parliament.

17. The judicial authority of South Africa is vested in the Judicial Services Commission.

18. In *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC), the Constitutional Court confirmed that participatory democracy is an important part of South Africa's current constitutional dispensation.

19. In South Africa the majority of the members of Cabinet are also members of the National Assembly and this indicates that there is no separation of powers between the executive and the legislature.

20. With the support of at least 75 percent of its members, a provincial legislature can amend section 40 of the 1996 Constitution of South Africa.

**QUESTION 2**

In detail explain the difference between the following concepts

2.1 the individual and collective accountability of members of cabinet.

2.2 a supreme constitution and an inflexible constitution.

2.3 direct democracy and representative democracy.

2.4 parliamentary sovereignty and constitutional supremacy.

2.5 functional and personal independence of the judiciary.

[20]
QUESTION 3

3.1 It is generally accepted that Members of Parliament (MPs) must be able to speak freely to be able to do their work and expose wrongdoing without the fear of being held legally liable for what they say in Parliament. In November 2012 DA MP David Maynier asked Parliament about the number of flights taken by the Public Service Minister Lindiwe Sisulu on a Gulfstream jet while she was still Minister of Defence. Maynier further indicated that this amounts to a waste of public funds. In her response, Minister Sisulu regarded those allegations as “hogwash and balderdash”. She further instructed the honourable Maynier to “take his flea-infested body at peace and sit down.” With reference to the provisions of the Constitution and case law, critically discuss the following:

(a) The privileges of Members of Parliament and how these privileges are regulated (10)
(b) Whether parliamentary privileges are subject to judicial review or not. Discuss in full. (10)

3.2 With reference to the provisions of the Constitution, explain who has the power to remove the President from office, and how and under which circumstances (5) [25]

QUESTION 4

The Constitution prescribes a different process for the appointment of Constitutional Court judges to that used for the appointment of other High Court or Supreme Court of Appeal (SCA) judges. With reference to relevant sections of the Constitution, answer the following questions:

4.1 Which factors must be taken into account when judicial officers are appointed? (4)

4.2 What role does the Judicial Service Commission play in the appointment of judges? (5)

4.3 What role does the President of the country play, if any, in the appointment of the judicial officers of the various courts in South Africa? (6)

4.4 Are you of the opinion that the process of appointing judicial officers is supportive of or in contradiction with the principle of separation of powers? Explain in full (5) [20]

QUESTION 5

5.1 Explain what will happen in the event of a conflict between national and provincial legislation dealing with a Schedule 5 matter (5)

TURN OVER
5.2 With reference to case law and the doctrine of separation of powers, critically discuss whether Parliament can delegate its law-making functions to the President.

(10) [15]

TOTAL: [100]
### PART 1 (GENERAL/ALGEMEEN) DEEL 1

**Study Unit No.**

**Paper Number**

**Vorl.REGISTER**

**Paper Number**

**Vorl.REGISTER**

**Student Number**

**University Paper No.**

**Universiteit Paper No.**

**Date of Examination**

**Datum van eksamen**

**Examination Centre**

**Eksamensentrum (by Pretoria)**

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**Important**

1. Use only an HB pencil to complete this sheet.
2. Mark like this **⇒**
3. Check that your initials and surname has been filled in correctly.
4. Enter your student number from left to right.
5. Check that your student number has been filled in correctly.
6. Check that the unique number has been filled in correctly.
7. Check that only one answer per question has been marked.
8. Do not fold.

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4. Vul u studentenummer van links na regs in.
5. Kontroleer dat u die korrekte studentenummer verstrek het.
6. Kontroleer dat die unieke nommer reg ingevul is.
7. Maak seker dat net een alternatief per vraag gemerk is.
8. Moge u nie.

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### PART 2 (Answers/Antwoorde) DEEL 2

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