Tutorial Letter 201/1/2012

CONSTITUTIONAL LAW

Semester 1

DEPARTMENT OF PUBLIC, CONSTITUTIONAL AND INTERNATIONAL LAW

This tutorial letter contains important information about your module.
Dear Student

Read this tutorial letter carefully. It contains commentary on Assignment 01, Assignment 02, and on the self-assessment assignment for the first semester of 2012. It further contains information on the forthcoming May/June 2012 examinations. We hope that the feedback on assignments will provide an insight into what is expected of you in the examinations.

We trust that the assignments were challenging, and that you are coping with the workload.
1 FEEDBACK ON ASSIGNMENT 01

Assignment 01 was relatively simple and should not have given you too much trouble. This was a compulsory assignment, consisting of 25 true or false questions. You had to mark either (1) for "true" or (2) for "false" for each of the following questions on the Unisa mark-reading sheet.

You were only required to state whether a question was "true" or "false" by indicating 1 or 2 in the mark reading sheet. You did not have to give reasons for your answers. However, to help you with your studies, we have supplied the reasoning for each answer.

Your answers should have been as follows:

<table>
<thead>
<tr>
<th>Question</th>
<th>Correct answer</th>
<th>Explanation / reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>False (2)</td>
<td>Constitutional law is part of public law (study guide p 25).</td>
</tr>
<tr>
<td>2</td>
<td>True (1)</td>
<td>The institution of traditional leadership has been officially recognised as a legitimate institution in the regulation of state authority at local level (study guide p 264-265 and s 20(2)(g) of the Traditional Leadership and Governance Framework Act 41 of 2003).</td>
</tr>
<tr>
<td>3</td>
<td>True (1)</td>
<td>The national sphere does have an over-arching role over the other two spheres (study guide p 83)</td>
</tr>
<tr>
<td>4</td>
<td>False (2)</td>
<td>According to section239(b)(ii) of the Constitution, “organ of state&quot; means any other functionary or institution exercising public power or performing a public function in terms of legislation but does not include a court or a judicial officer. The judiciary is the third branch of government.</td>
</tr>
<tr>
<td>No.</td>
<td>Statement</td>
<td>True/False</td>
</tr>
<tr>
<td>-----</td>
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</tr>
<tr>
<td>5</td>
<td>The three spheres have a hierarchical relationship and are interrelated and interdependent (study guide pp 83-89).</td>
<td>False (2)</td>
</tr>
<tr>
<td>6</td>
<td>Members are selected by the President.</td>
<td>False (2)</td>
</tr>
<tr>
<td>7</td>
<td>Judges enjoy personal independence (study guide p 211).</td>
<td>False (2)</td>
</tr>
<tr>
<td>8</td>
<td>They are guided by the Constitution and not to dictate according to their own whims.</td>
<td>False (2)</td>
</tr>
<tr>
<td>9</td>
<td>NCOP is a House of Parliament, not a committee (study guide p 102).</td>
<td>False (2)</td>
</tr>
<tr>
<td>10</td>
<td>Judicial authority vests in the courts (study guide p 193e).</td>
<td>False (2)</td>
</tr>
<tr>
<td>11</td>
<td>Customary law is officially recognised as a legitimate system of law (study guide pp 4-5).</td>
<td>False (2)</td>
</tr>
<tr>
<td>12</td>
<td>The Constitution is the supreme law of the Republic and cannot be equated with other laws adopted by the legislature (study guide p 2).</td>
<td>False (2)</td>
</tr>
<tr>
<td>13</td>
<td>Indigenous law is recognised as a legitimate system alongside other systems in South Africa (study guide p 36).</td>
<td>False (2)</td>
</tr>
<tr>
<td>14</td>
<td>Under the 1996 Constitution, the Constitution is the supreme law of the country; therefore government authority is derived from the Constitution (study guide p 38).</td>
<td>False (2)</td>
</tr>
<tr>
<td>15</td>
<td>False (2)</td>
<td>The difference between the parliamentary and the presidential system of government is that in a presidential system the head of government is also the head of the state while in the parliamentary system the head of state and the head of government are two different persons; the head of government is not a member of the legislature in a presidential system but in a parliamentary system, the head of government and his/her cabinet are members of the legislature (study guide p 49).</td>
</tr>
<tr>
<td>16</td>
<td>True (1)</td>
<td>Only the courts are empowered to give effect to the Constitution through judicial review of government's/citizens’ conduct (study guide p 196).</td>
</tr>
<tr>
<td>17</td>
<td>False (2)</td>
<td>SA is characterised by a federal form of government which entails the sharing of constitutional and legislative authority (study guide p 88).</td>
</tr>
<tr>
<td>18</td>
<td>False (2)</td>
<td>Organs of state should avoid litigating against each other.</td>
</tr>
<tr>
<td>19</td>
<td>False (2)</td>
<td>It is only the National Assembly with a two thirds majority that can remove the President from office (study guide p 169).</td>
</tr>
<tr>
<td>20</td>
<td>False (2)</td>
<td>The authority vests in the municipal council (study guide p 84).</td>
</tr>
<tr>
<td>21</td>
<td>False (2)</td>
<td>The Public Protector investigates only the conduct of government or administration alleged to be improper (study guide p 184).</td>
</tr>
</tbody>
</table>
22 False (2) Customary law should be applied and determined within its own context (study guide p 5).

23 False (2) See para 34 of the Heath judgment.

24 True (1) Including the relations between individuals (study guide p 24)

25 False (2) The Constitution guarantees the independent existence, powers and functions of the local sphere of government (study guide p 268).

2 FEEDBACK ON ASSIGNMENT 02

1.1 The Constitution of the Republic of South Africa is described as an inflexible constitution.

1.1.1 Explain what is meant by the concept “inflexible”. (2)

The term "inflexibility" in the legal sense of the word means the difficulty with which a law can be amended. An inflexible constitution is a constitution which is difficult to amend because it requires special amendment procedures (eg a 30 days’ notice period) and special amendment majorities (eg a two-thirds majority) before it can be amended. An inflexible constitution can therefore not be amended in the same manner as ordinary legislation. The aim is to entrench the constitution as whole or some of its provisions against the shifts in ordinary politics. However, this does not mean that an inflexible constitution cannot be amended.

1.1.2 State the different special majorities required for amending the various provisions of the Constitution. (8)

In terms of section 74 of the Constitution

(1) Section 1 and this sub-section may be amended by a Bill passed by:

(a) the National Assembly, with a supporting vote of a least 75 per cent of its members: and
(b) the National Council of provinces, with a supporting vote of at least six provinces.

(2) Chapter 2 may be amended by a Bill passed by

(a) the National Assembly, with a supporting vote of at least two thirds of its members;

and

(b) the National Council of Provinces, with a supporting vote of at least six provinces.

(3) Any other provision of the Constitution may be amended by a Bill passed by

(a) the National Assembly, with a supporting vote of at least two-thirds of its members;

and

(b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment:

(i) relates to a matter that affects the Council;

(ii) alters provincial boundaries, powers, functions institutions, or

(iii) amends a provision that deals specifically with a provincial matter.

1.1.3 Distinguish between the concepts “government” and “state”. (4)

The state is the permanent legal entity (consisting of a territory, a community, a legal order, an organised government and a measure of political identity), while the government is the temporary bearer of state authority. The government represents the state at a particular time.

The term “state”, like the term “government”, has not always had the same meaning it has today. Initially, “government” did not have a political connotation. Instead, it was closely linked with the judicial function of government (eg the application and interpretation of the law). According to Baxter (at 227), government is “the tangible machinery of the state”.

7
1.2 Critically discuss whether the indigenous form of separation of powers can be implemented within the broader structures of governance in a constitutional state such as South Africa. (6)

Separation of powers is one of the essential principles of constitutionalism and democracy. In a nutshell, it refers to the division of state authority among the legislative, executive and judicial branches of government. TW Bennett states that in colonial times, the two concepts that were critical in the determination of African forms of government were “tribe” and “chief”.

Tribe denoted a partially stratified political structure within which the lives of no more than a few thousand individuals were regulated. Members were assumed to be related by a tie of kinship. Leadership within the tribe fell on the most senior member: the chief.

The chief, together with the ward heads, who were normally senior members of leading families within the nation or a particular community, and the kraal heads or family heads exercised all three forms of governmental power at different levels in the hierarchy of authority. The chief was the most important and powerful member of his nation, occupying such position by ancestry alone.

The exercise of power by the rulers was not subject to the scrutiny of an independent judiciary, but was controlled by rituals, by the military power and by the patron-client relationship created by the loan of cattle. However, we know that in a constitutional state, effective and legitimate government depends on different institutions performing different functions. Although this system of government works within indigenous communities, it is unlikely to be replicated within a modern state where political, economic and social factors demand a more institutionalised form of government with the minimum or no overlap between the legislative, executive and judicial branches of government.

1.3 What is the role of the institution of traditional leadership as a legitimate institution in the regulation of public administration at local level alongside the broader system of governance in South Africa? (10)

Before 1993, the implementation of apartheid policies at local level resulted in a highly fragmented, dysfunctional and illegitimate system of local government. The system was marked by a sharp separation between developed, well-serviced and representative local government in white areas, and underdeveloped, seriously underserviced and unrepresentative local government in black areas.
The institution of traditional leadership was also not recognised as a legitimate institution that plays an important role in addressing issues of governance at local level, except as an instrument to divide and rule, and to exercise control over the majority of South Africans.

Pursuant to the dawn of democracy and the adoption of the Constitution of the Republic of South Africa of 1996 (the Constitution”), local government has been restructured in order to fall within the ambit of the new constitutional dispensation.

The Constitution forms the bedrock of this development and is supplemented by the following pieces of legislation:

- the Local Government: Municipal Systems Act 32 of 2000;  
- the Local Government: Municipal Finance Management Act 56 of 2003; and  

These pieces of legislation are supplemented by the Framework Act, which seeks to ensure the integration of the institution of traditional leadership in ensuring the:

- promotion of the ideals of co-operative government, integrated development planning, sustainable development and service delivery through the allocation of roles and functions (s 20(2)(g) of the Framework Act).

The adoption of these particular pieces of legislation heralded a new development and a new legal order in the promotion of good governance at local level. They affirm the objectives of local governance as set in section 152 of the Constitution, namely to:

- provide democratic and accountable government for local communities  
- ensure the provision of services to local communities in a sustainable manner  
- promote social and economic development

According to Rautenbach and Malherbe, this means that the principles of cooperative governance also apply to the relationship between local government and other spheres of government.
These principles are reinforced by the recognition of the institution in the regulation of public administration and governance at local level as envisaged in section 20(1) of the Framework Act of 2003, which lays down the framework for guiding principles for the allocation of the institutions roles and responsibilities in public governance.

[30]

Question 2

2.1 What are the basic features of the federal form of government?

(a) the distribution of state authority and resources among the various levels of government
(b) the provinces being given broader powers in executing their mandates;
(c) the limited jurisdiction of provinces on important issues such as the regulation of defence, taxation and customs matters, which matters are normally dealt with by the national government;
(d) disputes between the spheres of government being resolved by an independent arbiter, such as the Constitutional Court in South Africa [Premier, Western Cape v President of the Republic of South Africa and Another 1999 (4) BCLR 383].

These features affirm:

- the supremacy of the Constitution;
- the division power among the sphere of government;
- the rigidity of the Constitution; and
- the independence of the judiciary.

2.2 With reference to the decision of the Constitutional Court in Premier of the Western Cape v President of the Republic of South Africa and Another 1999 (4) BCLR 383, discuss the system of co-operative government as an integrated form of federalism.

The federal system of government is characterised by the distribution of government authority among the different spheres of government. This means that the authority of the state is constitutionally entrenched and divided among the various spheres of government through various methods.
In a federal system of government, the different spheres of government share legal sovereignty, with each sphere having constitutional and legislative authority to make decisions independently, but which do not conflict with one another.

The basic features of this form of government are as follows:

- the distribution of state authority and resources among the various levels of government
- the provinces being given broader powers in executing their mandates
- the limited jurisdiction of provinces on important issues such as the regulation of defence, taxation and customs matters, which matters are normally dealt with by the national government
- disputes between the spheres of government being resolved by an independent arbiter, such as the Constitutional Court in South Africa

In the case of Premier of the Western Cape v President of the Republic of South Africa and Another, the Premier of the Western Cape filed an application to the Constitutional Court to have certain provisions of the Public Service Act, as introduced by the Public Service Amendment Act of 1998, declared unconstitutional and invalid. The Western Cape government argued that the amendments infringed the executive authority of the province and interfered with its provincial autonomy by encroaching on the functional and institutional integrity of the province. They argued therefore, that this violated section 41(1)(g) of the Constitution which mandates all spheres of government to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. The court, however, found that the new scheme did not violate section 41(1)(g) of the Constitution.

The court held that different spheres of government must cooperate with each other in mutual trust and good faith to secure the implementation of legislation in which they all have a common interest. Further, this cooperation requires that every reasonable effort be made to settle disputes before a court is approached to do so.

2.3 On 20 September 2008, the Presidency issued the following statement:

Following the decision of the national executive committee of the African National Congress to recall President Thabo Mbeki, the President has obliged and will step down after all constitutional requirements have been met.
In the light of this statement answer the following questions:

2.3.1 What are the factors that need to be taken into account in order to remove the President from office? (6)

Section 89 of the 1996 Constitution governs this aspect. It lists the grounds for removal as follows:

(a) a serious violation of the Constitution or the law;
(b) serious misconduct; and
(c) inability to perform the functions of office.

2.3.2 Who has the authority to remove the President from office? (2)

The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office.

2.3.3 What role is played by political parties in this regard? (4)

Only the National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office. Political parties do not play any role in this regard.

2.4 Draw a distinction between personal and functional independence of the judiciary. (10)

Functional independence

Functional independence is primarily an incidence of the separation of powers doctrine. Functional independence refers to the way in which the courts operate within the framework of a constitutional state. In the Canadian case, *The Queen in Right of Canada v Beaugard* (1986) 30 DLR (4th) 481 (SCC) 491, Dickson CJ spoke of the core principle central to the independence of the judiciary as the "complete liberty of individual judges to hear and determine cases before them independent of, and free from, external influences or influence of government, pressure groups, individuals or even other judges".
This means that judicial power is exercised by the judiciary, and may not be usurped by the legislature, the executive or any other institutions. Judicial officers exercise their powers subject only to the Constitution and the law, not to the whims of public opinion or of the majority in Parliament.

Through the years, the functional independence of the South African judiciary has been threatened on more than one occasion. The most famous (or infamous!) example occurred during the 1950s, when Parliament attempted to set up a High Court of Parliament which would have the power to set aside decisions of the Appellate Division of the Supreme Court. The creation of the High Court of Parliament was Parliament's response to an earlier decision of the Appellate Division (Harris v Minister of Interior 1952 (2) SA 428 (A)), in which it declared the Separate Representation of Voters Act 46 of 1951 unconstitutional, on the ground that it was not adopted in accordance with the correct procedure for constitutional amendments. (The Separate Representation of Voters Act aimed to remove "coloured voters" from the common voters' roll.)

The High Court of Parliament subsequently reversed the decision in the Harris case and upheld the validity of the Separate Representation of Voters Act. The validity of the High Court of Parliament Act was attacked in Minister of the Interior v Harris 1952 (4) SA 769 (A) (the "second Harris case"). It was argued that Parliament was endeavoring to assume the role and functions of the Court and was attempting to act as judge, jury and executioner. The Cape Provincial Division accepted this argument, and so did the Appellate Division. The Appellate Division found that the High Court of Parliament was no court of law, but was merely Parliament in a different guise. The Act was therefore invalidated.

Section 165 of the 1996 Constitution seeks to prevent such a situation from ever arising again. Subsection (1) states that the judicial authority is vested in the courts; subsection (2) recognises the independence of the courts; and subsection (3) provides that no person or organ of state may interfere with the functioning of the courts. Subsection (4) goes even further, and enjoins organs of state to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

Another factor that contributes to the functional independence of the courts is the fact that judicial officers enjoy immunity against civil actions and the offence of contempt of court, as stated in May v Udwin 1981 1 SA 19 (A):
“public interest in the due administration of justice requires that a judicial officer, in the exercise of his judicial function, should be able to speak his mind freely without fear of incurring liability for damages of defamation”.

The reason for this rule is obvious. Judicial officers would not be able to perform their tasks competently if they could be sued for defamation every time they expressed an unfavourable view about a litigant or the credibility of a witness during the course of giving judgment.

**Personal independence**

Personal independence, which is also known as institutional independence, is secured by making sure that judicial officers are satisfied with their conditions of service and will not, therefore, derogate from performing their core functions.

The personal independence of judges is determined by the following:

(a) The manner in which they are appointed. Are they simply appointed by the President or the majority party in Parliament? Or are there mechanisms in place to ensure that judges will not be seen as mere political appointees who are unlikely to act independently and impartially?

(b) Their terms of office. If judges are appointed for a fixed, non-renewable period, they will not need to seek the favour of politicians in order to be re-appointed.

(c) Their security of tenure. It would have serious consequences for judicial independence if the executive were in a position to dismiss judges more or less arbitrarily.

(d) Their conditions of service. Politicians should not be in a position to determine the salaries of judicial officers in an arbitrary manner.

Students will also be credited for indicating how the Constitution safeguards the personal independence of judges.

The Constitution seeks to safeguard the personal independence of judges in the following ways:

(a) We have already seen that the Judicial Service Commission plays an important role in the appointment of judges. The involvement of the Judicial Service Commission makes it more difficult for the executive merely to appoint its own loyal supporters.
(b) Section 176 of the Constitution provides that judges of the Constitutional Court are appointed for a non-renewable term of 12 years. (However, they must retire at the age of 70 years.) Other judges may serve office until the age of 75 years, or until they are discharged from active service in terms of an Act of Parliament. This means that judges enjoy security of tenure, so that there is no need for them to seek the favour of politicians to make sure that they keep their jobs.

(c) The Constitution makes it difficult for the executive to dismiss judges. Section 177 clearly stipulates the circumstances under which a judicial officer may be compelled to vacate his/her position before the termination of his/her term of office. The President may remove a judge from office only if the Judicial Service Commission finds that he/she suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, and if the National Assembly has called for his/her removal by a resolution adopted with the support of at least two-thirds of its members.

Section 176(3) provides that the salaries, allowances and other benefits of judicial officers may not be reduced.

(20)

3 FEEDBACK ON SELF-ASSESSMENT ASSIGNMENT

Question 1

1.1 The Supreme Court of Appeal in the case of Sankie Mthembu-Mahanyele v Mail & Guardian Ltd (054/2003) [2004] ZASCA 67 held tha:

…it is necessary to hold members of government accountable to the public…in order to allow the robust and frank comment in the interest of keeping members of society informed about what the government does (at para 65)
In the light of this judgment:

1.1.1 Discuss the principles that are essential for the development of sound intergovernmental relations in public administration. (12)

Section 195 of the Constitution provides for basic values and principles governing public administration. These principles provide a sound framework by means of which the management of public administration can be driven. According to section 195, public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) Efficient, economic and effective use of resources must be promoted.
(c) Public administration must be development-oriented.
(d) Services must be provided impartially, fairly, equitably and without bias.
(e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
(f) Public administration must be accountable.
(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

In light of the judgment in *Mthembu-Mahanyele*, the principle that the SCA stressed was that public administration must be accountable. The court further stressed that accountability is of the essence as it is also captured in the founding values expressed in section 1(d) of the Constitution. Accountability therefore means that managers in the public service must be subject to public scrutiny and be answerable for their conduct and activities.

1.1.2 What is the importance of public participation in the regulation of state authority? (8)

Public participation is important in the regulation of state authority. This form of participation is sanctioned by section 195(1)(e) and (g) which provides that:
(a) People’s needs must be responded to, and the public must be encouraged to participate in policy making.

(b) Transparency must be fostered by providing the public with timely, accessible and accurate information.

In addition, the Public Service Act, Proclamation 103 of 1997 seeks to regulate and improve, among others, increased public participation in governance. Public participation is important for a variety of reasons, including but not limited to the following:

- It facilitates access to information.
- It provides people whose lives will be affected by proposed policies with the opportunity to express their views and to influence (attempt to influence) public officials about the desirability of proposed policies.
- It provides a mechanism for ensuring the democratisation of the planning process and public management process.
- It balances the demands of central control against the demands for concern for the requirements of local government and administration.
- It plays a watchdog role.

Public participation is further entrenched in various sections of the Constitution as follows:

Section 59 provides that the National Assembly must:

(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees

Section 172(1) provides that the National Council of Provinces must

(a) facilitate public involvement in the legislative and other processes of the Council and its committees

Section 118(1) provides that a provincial legislature must

(a) facilitate public involvement in the legislative and other processes of the legislature and its committees
1.1.3 **Explain the intersection of co-operative government with intergovernmental relations.**

The principles of cooperative government and intergovernmental relations (s 40 and 41 of the 1996 Constitution) which, to a large extent, are the constitutional embodiment of the philosophy of Bundestreu and federal partnership found in Germany and America, are expressly reiterated in section 151(4) and 154 of the 1996 Constitution. It is clear that these principles recognise the relational spectrum into which local government is placed. These principles recognise the interdependence of three spheres of government, and place a duty on them to respect one another’s powers, functions and institutions, to cooperate and to coordinate their activities in good faith and mutual trust, to inform one another of new policy measures, to assist one another, and to avoid legal proceedings against one another.

The significance of intergovernmental relations was endorsed by the Constitutional Court in *In re the Certification of the Constitution of the Republic of South Africa 1996* (10) BCLR 1253 (CC). (See the discussion on p 272 of the study guide.) Intergovernmental relations play an invaluable role in representing local government interests at national and provincial levels.

1.1.4 **Why is public participation essential within the African value system?**

Public participation is important because it has always been present in the African traditional system. Traditionally, people participated through the *imbizo/legotla*. African communities use this forum as a consultation process and a forum to discuss issues affecting the community. In these forums (*legotla*), communities normally convey to their leaders locally felt needs and express their grievances. People use the language that everybody understands.

1.2 **The Cape Town Metropolitan Council passed a by-law which seeks to regulate the sale of liquor during certain hours of the day. Pursuant to the adoption of the by-law, debates ensued on the extent to which the Council may monitor the implementation of the said by-law.**

In this regard, as an expert in Constitutional law:
1.2.1 Explain the role of municipalities in co-operative government.

The system of cooperative government is determined by chapter 3 of the Constitution. Cooperative government is the system of government that defines the framework within which the relations between the three spheres of government must be conducted. This enables the lower sphere of government to influence the policy it will have to execute. Section 40 of the Constitution provides that government is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated. It further directs that all spheres of government must observe and adhere to the principles in Chapter 3 and must conduct their activities within the parameters provided for in this Chapter. Section 154 provides for the role of municipalities in cooperative governance as follows:

- The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

Therefore, municipalities play a major role in cooperative governance as the key site of service delivery, and they promote social and economic development.

1.2.2 Discuss whether local government (municipalities) can adopt legislation that deals with Schedules 4 and 5 matters respectively.

- According to section 151 of the Constitution, the legislative authority of a municipality vests in the municipal council. The section further indicates that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
Section 155(7) of the Constitution provides that the national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

Section 156 (1) indicate that a municipality has executive authority in respect of, and has the right to administer:

(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
(b) any other matter assigned to it by national or provincial legislation

Further, sub-paragraph (4) provides that the national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if:

(a) that matter would most effectively be administered locally; and
(b) the municipality has the capacity to administer it.

From the above sections it is clear that the Constitution has given municipalities or local government power to make by-laws on the matters listed in schedule 4B and 5B of the Constitution. Matters on Schedule 4B or 5B depends on whether a municipality is a metropolitan, local or district municipality.

Metropolitan municipalities (Category A) can make by-laws on all the matters listed in Schedule 4B (eg air pollution, building regulations, child-care facilities, etc) and 5B (eg beaches and amusement, cemeteries and control of undertakings that sell liquor). In addition, a municipality can also make laws on any other matter that has been assigned to it by national or provincial government.

This was a self-assessment assignment that was not meant to be submitted.
4 FORMAT OF THE MAY/JUNE EXAMINATION PAPER

The 2012 May/June examination will be a **two-hour** examination paper. The paper consists of four questions. Question 1 must be answered on a mark-reading sheet and contains true or false answers and will require you to indicate your choice by selecting 1 for true or 2 for false. Questions 2-4 are written questions with sub-questions carrying a mark of between 2 and 15.

In the past, we have observed, and always emphasised that Constitutional law is living law. This means that its principles are easily identifiable in the running of the day-to-day activities of the country. It is therefore essential that you familiarise yourself with its basic principles in order to be able to apply them in concrete situations. In order to enhance your chances of success, you need to be familiar with the Constitution, literature and the case law referred to in the study guide and in Tutorial letter 101.

It is very important that you manage your time in the examination properly in order to have enough time to answer all the questions. Your answers must be well-structured and be in accordance with the marks allocated to each question. It is imperative that you read the examination paper thoroughly and make sure that you understand what is required of you before you start answering the questions.

5 CONCLUDING REMARKS

We hope that the above commentary has helped you to understand what is expected of you in this module. This is the last tutorial letter of the semester.

Good luck with your studies!

Your lecturers