This marking memorandum 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. Once the Public Protector’s provisional report on the upgrade to President Jacob Zuma’s Nkandla homestead becomes a final report, it becomes a primary source of constitutional law and has binding force and not mere persuasive value. (1)

2. There is not a clear distinction between an inflexible constitution and a supreme constitution because they are always one and the same. (1)

3. As the South African Constitution is an example of an inflexible constitution, a special majority of 75% of members of the National Assembly is required to amend section 9 of the 1996 Constitution, which is the equality clause. (1)

4. An electoral system is one of many mechanisms to promote democracy. (1)

5. Although the 1996 Constitution does not expressly state that the separation of powers is part of our law, the Constitutional Court, in the First Certification case, confirmed that the doctrine of separation of powers is firmly entrenched in the Constitution. (1)

6. Cooperative government refers to a system of government in terms of which the legislative, executive and judicial branches of government are separated. (1)

7. In South Africa one of the functions of the National Assembly is the election of the President. (1)

8. In South Africa all categories of prisoners are entitled to register and vote in national elections. (1)

9. In accordance with the supremacy of the 1996 Constitution of South Africa parliamentary privileges are subject to judicial review. (1)

10. Parliamentary privileges refer to the common law discretionary powers that the monarch exercised by virtue of his or her status as supreme head of government. (1)

11. Parliament has exclusive competence to amend the 1996 Constitution of South Africa. (1)
12. If an ordinary Bill affecting the province is passed in accordance with a procedure laid down for the adoption of Bills not affecting the province, or *vice versa*, the adopted Bill is not properly enacted and does not become law. 

13. The National Assembly is authorised to assign any of its legislative powers, including the power to amend the Constitution, to a provincial legislature. 

14. For a provincial legislature to pass or amend its constitution, at least two-thirds of its members must vote in favour of such a constitution or amendment. 

15. In *De Lille v Speaker of the National Assembly* 1998 BCLR 916 (C) it was held that the exercise of parliamentary privileges, which is clearly a constitutional power, is not immune from judicial review. 

16. Section 75 of the 1996 Constitution of South Africa makes provision for a Bill to be referred to the mediation committee if the National Assembly and the National Council of Provinces do not agree on a particular version of a Bill. 

17. In *President of the RSA v South African Rugby Football Union* 1999 (2) BCLR 175 (CC), the Constitutional Court found that the President had abdicated his responsibility to appoint a Commission of Inquiry in terms of section 84(2)(f) of the Constitution. 


19. In the event of a conflict between national legislation and provincial legislation in respect of a Schedule 4 matter, national legislation always prevails. 

20. In *Fedsure v Greater Johannesburg Metropolitan Council* 1999 (1) SA 374 (CC), the Constitutional Court held that a local government was no longer a public body exercising delegated powers, but a deliberative legislative assembly with legislative and executive powers recognised by the Constitution itself.
QUESTION 2

Explain the following:

1. constitutional law  
2. Constitutionalism  
3. Representative democracy  
4. the distinction between state and government  

QUESTION 3

It is universally accepted in modern democracies that parliaments cannot attend to every single task that they are enjoined to perform, particularly when it comes to making laws aimed at regulating the conduct of their subjects. Parliaments cannot foresee every single occurrence that may require regulation and therefore usually draft laws in skeletal form.

In the light of the above statement:

(1) explain what you understand by the term "delegation of legislative authority"  

(2) With reference to case law and the provisions of the Constitution, discuss whether or not Parliament may delegate its law-making functions to:

(a) the executive  

(b) provincial legislatures  

[20]
QUESTION 4

(1) List the features that are regarded as indispensable to a democratic government. (5)

(2) The Helen Suzman Foundation launched legal action against the Judicial Service Commission in order to clarify the procedure and decision-making process relating to the appointment of persons for judicial office. In light of the above, answer the following questions with reference to the provisions of the Constitution and any other relevant authority:

2.1 What are the requirements for the appointment of judges? (5)

2.2 Which persons, parties and/or organs of state are involved in the appointment of the Chief Justice and what are their roles? (10)

[20]

QUESTION 5

(1) Explain the distinction between parliamentary and presidential systems of government. (5)

(2) With reference to the provisions of the Constitution and case law, discuss the concept of the functional independence of the judiciary. (10)

(3) Distinguish between collective and individual ministerial accountability. (5)

[20]

TOTAL: {100}