QUESTION 2

2.1 Loud Speaker is a member of the Talk-a-Lot political party. During one of the parliamentary sessions, she became so enraged with the conduct of members of other political parties that she accused certain members of the Freak-a-Zoid party of being spies and criminals. Pursuant to her outburst, she was suspended for 15 days by Parliament. Loud Speaker is furious about her suspension and claims that Parliament has violated a number of her fundamental rights. You have been approached by Loud Speaker for advice. With reference to the provisions of the Constitution and applicable case law, advise Loud Speaker on the following:

a) What are the privileges of Members of Parliament and how are these privileges regulated? (7)

Parliamentary privileges are the powers and privileges enjoyed by members of Parliament that enable them to perform their functions without hindrance (external interference). Privileges are stipulated in section 57(1) of the Constitution and include (1) the privilege of Parliament to punish persons for contempt and to determine its own procedures; (2) the freedom of members to say anything in Parliament, without having to fear that they will be held liable in a Court of law; (3) Parliamentary privileges under the 1996 Constitution. The particulars of the privileges provided for in the Constitution are regulated by the Powers and Privileges of Parliament and Provincial Legislation Act 94 of 2004.

The National Assembly is competent to determine and control its own internal arrangements, proceedings and procedures, and to make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement. In particular, members of the National Assembly are guaranteed freedom of speech in the Assembly and its committees, provided that they adhere to the internal rules of debate. For example, they are not allowed to use offensive or unbecoming language (such as the statement by EFF MP Julius Malema on 19 June 2014 when he said that “the ANC murdered Marikana miners”). Members of Parliament thus enjoy absolute freedom of speech and are further exempt from civil or criminal liability for anything they have said or produced before the Assembly or its committees.

Parliament and its committees are competent to summon persons to give evidence and submit documents (in terms of sections 14-17 of the Privileges Act 4 of 2004). Parliament is entitled to enforce its own internal disciplinary measures for contempt of Parliament and other infringements of the Act; failure to comply with an order or decision of Parliament; failure to submit documents upon request; perjury; et cetera.

In addition, Members of Parliament are not allowed to vote on any matter in which they have a financial interest.

b) Are parliamentary privileges subject to judicial review or not? (8)

Yes, the exercise of parliamentary privilege is subject to the constitutional review power of the Courts. This was established in the case of De Lille v Speaker of the National Assembly 1998 (7) BCLR 916 (C). In this case, Patricia de Lille, a PAC politician (as she then was) was suspended for 15 days from the National Assembly after having made allegations that certain ANC officials
had been “spies for the apartheid regime”. De Lille challenged the decision of the National Assembly in Court on the basis that she had not had a fair hearing and that several of her constitutional rights had been infringed.

The Speaker of Parliament invoked section 5 of the Powers and Privileges of Parliament Act, as read with section 57(1) of the Constitution which allows Parliament to determine and control its internal arrangements, arguing that Parliament has the right to control its own affairs and this is not reviewable since it is a privilege of Parliament.

The Court held, however, that the exercise of parliamentary privilege is subject to the Constitution (at paragraph 25 of the judgment) and went on to find that the power to determine and control its internal arrangements does not embrace the power to suspend a member as a punishment for contempt (paragraph 27). After considering a number of inter-related and relevant constitutional provisions concerning the multi-party system of democratic government in South Africa, Hlophe J held that a suspension of a member of the Assembly from Parliament for contempt is not consistent with the requirements of representative democracy. That would be a punishment which is calculated to penalise not only the member in contempt, but also his or her party and those of the electorate who voted for that party who are entitled to be represented in the Assembly by their proportionate number of representatives.

At paragraphs 33 to 34, Hlophe J concluded thus: “the nature and exercise of Parliamentary privilege must be consonant with the Constitution … [and] is not immune from judicial review”. He went on to hold that judicial review does not constitute an infringement of Parliament’s right to control its own procedures and discipline its members and nor does it violate the separation of powers doctrine, but it obliges a court to intervene/interfere where Parliament has improperly exercised that privilege and has acted mala fide or capriciously and in defiance of the constitutionally inherent rights of a member.

Consequently, the judge found that Ms de Lille’s suspension constituted an unjustified infringement of her constitutional rights to freedom of speech (section 16 and 58(1)), just administrative action (section 33) and access to Courts (section 34). He went on to confirm that Parliament is no longer supreme, but must ensure that it acts in conformity with Constitutional precepts.

2.2 What do you understand by the term co-operative government in the constitutional sense? (5)

- Cooperative government refers to the system of government that indicates the framework within which the relations between the three spheres of government (National; Provincial and Local) must be conducted. According to section 41(1) (h) of the Constitution, the three spheres of government must cooperate with one another in mutual trust and good faith.
- State authority is therefore divided into national, provincial and local spheres which are distinctive, interdependent and interrelated. (section 40 of the Constitution).
- In the Certification judgment the Constitutional Court emphasized that the Constitutional system chosen by the Constitutional Assembly is one of co-operative government in which powers in a number of functional areas are allocated concurrently to the national and the provincial levels of government.
- The principles of cooperative government and intergovernmental relations are set out in section 41 of the Constitution. Students should also be credited for giving examples of these principles.
QUESTION 3

3.1 In *Ex Parte President of the Republic of South Africa: In Re Constitutionality of the Liquor Bill* 2000 (1) BCLR 1 (CC), the court dealt with, among other things, the refusal of the then President (Nelson Mandela) to assent to the Liquor Bill passed by the National Assembly due to his reservations about its constitutionality. In paragraph 11, the Court held that:

Section 79(5) requires a decision from this Court as to whether ‘the Bill is constitutional’. In terms of section 167(4)(b), only the Constitutional Court may decide on the constitutionality of any parliamentary Bill, but may do so only in the circumstances anticipated in section 79. The general powers of the courts in dealing with constitutional matters are set out in section 172. That section requires that a Court when deciding a constitutional matter within its power ‘must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency’. Since the Bill has not yet been enacted, it is clearly not a ‘law’ as envisaged by section 172(1). Moreover, since the Bill as yet lacks legal force, the remedy section 172 envisages — a declaration of invalidity — is plainly inappropriate. It follows that the provisions of section 172 are not directly helpful in guiding the Court as to its role in the section 79 referral procedure.

With reference to this case and relevant sections of the Constitution, critically discuss the circumstances in which the President is allowed to refer a Bill to the Constitutional Court for a decision on its constitutionality, and the scope of the court’s power in this regard. (8)

The President may, pursuant to section 79(4) of the Constitution, refer the Bill to the Constitutional Court for a decision on its constitutionality only if his or her reservations concerning the constitutionality of the bill are not fully accommodated by Parliament. If the President has no reservations concerning the constitutionality of the Bill, or if his reservations have been fully accommodated by Parliament, the referral would be incompetent. In short, the presidential power is limited under s 79(4)(b) to the power to refer a Bill to the Constitutional Court “for a decision on its constitutionality” with respect to his reservations. The general powers of the courts in dealing with constitutional matters are set out in section 172. The Constitutional Court need only consider reservations expressly specified by the President regarding the Bill’s constitutionality; it does not have to consider the Bill in its entirety. In short, the Court considers only the President’s reservations. Whether it may ever be appropriate for the Court upon a presidential referral to consider other provisions which are manifestly unconstitutional, but which are not included in the President’s reservations, was not decided upon.

3.2 The Constitution prescribes different procedures for Bills amending the Constitution, ordinary Bills not affecting provinces, ordinary Bills affecting the provinces and Money Bills. In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (6) SA 214 CC, 45 the Constitutional Court held that a Bill must first be classified into one of these categories to determine which procedure should be followed in enacting the Bill. In light of the above statement and with reference to relevant sections of the Constitution:

a) briefly discuss the majorities and special procedures required to amend different parts and provisions of the Constitution. (4)

Section 74 of the Constitution governs bills amending the Constitution and stipulates that a bill passed by at least 75% of the members of the National Assembly and six provinces from the National Council of Provinces is required only when amending section 1 and section 74(1) of the Constitution. Chapter 2 of the Constitution may be amended by a two-thirds majority of the National Assembly and at least six of the provinces, as provided in section 74(2). Any other provision of the Constitution may be amended by a Bill passed by the National Assembly, with a
supporting vote of at least two thirds of its members; and the National Council of Provinces with a supporting vote of at least six provinces.

b) critically discuss the purpose and importance of tagging a Bill in the correct manner. (4)

Sections 75 and 76 of the Constitution deal with the adoption of ordinary Bills, that is, Bills that do not amend the Constitution. Section 75 sets out the procedure for the adoption of ordinary Bills not affecting the provinces, while section 76 deals with ordinary Bills affecting the provinces. It is important to tag Bills correctly because failure to do so may result in the Bill in question not becoming law. For instance, if a Bill affecting Provinces is improperly tagged as one not affecting provinces, such a Bill will not have been properly enacted and resultantly not become law.

c) with reference to provisions of the Constitution and case law, fully explain whether an ordinary individual member of the National Assembly, who is not a Cabinet member, can introduce a Bill in the National Assembly. (4)

In Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly 2012 (6) SA 588 (CC), the Constitutional Court declared invalid the Rules of the National Assembly which required a member of the National Assembly to obtain permission from the National Assembly to initiate and introduce Bills. [20]

QUESTION 4

4.1 Since 1996 the Judicial Service Commission plays a major role in the selection and appointment of judges. However, on a number of occasions the JSC has been a subject of litigation, like in the case of Acting Chairperson: Judicial Service Commission and Others v Premier of the Western Cape Province 2011 (3) SA 538 (SCA) and Freedom Under Law v Acting Chairperson: Judicial Service Commission and Others 2011 (3) SA 549 (SCA). With reference to the above-mentioned cases and relevant provisions of the Constitution, critically discuss the extent, if any, to which the JSC has contributed towards:

a) the independence of the judiciary (4)

Independence of the judiciary requires that judges must be free to decide matters placed before them in accordance with the assessment of facts in relation to the relevant law without any interference whatsoever from other bodies, persons or parties. Although the 1996 Constitution does not provide a clear definition of “judicial independence”, this principle is expressly entrenched in the Constitution. Section 165 of the Constitution provides that the judicial authority of the Republic is vested in the courts, which are independent and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice. No person or organ of state can interfere with the functioning of the courts.

b) the transformation of the judiciary (4)

Yes, the case of Helen Suzman v Foundation v Judicial Service Commission and Others (8647/2013) [2014] ZAWCHC 136 (5 September 2014) is an example of this. In this case, the Judicial Service Commission interviewed Advocate Jeremy Gauntlett to fill a vacancy in the Constitutional Court. Gauntlett is known as a great legal mind, with extensive experience, albeit that he is “acerbic”. Notwithstanding the fact that section 174(1) of the Constitution merely mentions that the candidate must be suitably qualified and fit and proper, it appeared as though the only reason why Jeremy Gauntlett’s name was not submitted to the President as a nominee for the Constitutional Court bench is because he is a white male. As the Helen Suzman
Foundation puts it “there is a growing perception that talented candidates for judicial appointment and advancement are being overlooked for reasons that are not clear or explicit”. However, it is quite conceivable that the Judicial Service Commission refused to recommend Jeremy Gauntlett for appointment to the bench because the Constitution explicitly states that the judiciary must reflect the gender and racial profile of the country and South Africa is already heavily criticized for the number of white, male judges on the bench.

4.2 Is the selection of judges by the JSC subject to judicial review? Briefly explain. (4)

Yes, the case of Justice Alliance of South Africa v President of Republic of South Africa and Others, Freedom Under Law v President of Republic of South Africa and Others, Centre for Applied Legal Studies and Another v President of Republic of South Africa and Others 2011 is a case in point. In this case, President Zuma attempted to renew the tenure of Chief Justice Sandle Ngcobo without having regard to the fact that the Judicial Service Commission had not yet finalised its interviews and provide the President with recommendations for his consideration. Ex post facto consultation is not acceptable when making decisions concerning the appointment of the Chief Justice.

Given that South Africa is premised on constitutional supremacy and the rule of law, if the Constitution or any other law makes reference to procedures and criteria that must be followed and adhered to in giving meaningful effect to the Constitution, then these provisions must be complied with, failing which, the judiciary is permitted to review such conduct.

4.3 What do you understand by the principle of separation of powers? Discuss fully. In your discussion, indicate with reference to relevant case law whether there is an explicit reference or mention of the separation of powers in the Constitution of South Africa. (8)

Simply put, separation of powers is the distribution of political authority that provides a system of checks and balances to ensure that no single branch becomes too powerful or infringes on the rights of the citizens. The doctrine entails that the freedom of citizens of a state can be ensured only if a concentration of power, which can lead to abuse, is prevented by a division of government authority into legislative, executive and judicial authority, and each are exercised by different government bodies.

In theory, the distinction between the three branches means that the government body or bodies responsible for the enactment of rules of law shall not also be charged with their execution or with judicial decisions concerning them. The executive authority is not supposed to enact law or to administer justice, and the judicial authority should not enact or execute laws. Therefore, the legislature drafts, amends, repeals laws that govern the relationship between the state and individuals and between individuals themselves. The executive is responsible for implementing the laws that have been passed by the legislature. The executive also formulates policy but then leaves it to the legislature to give effect to those policies by passing laws. The judiciary is responsible for arbitrating disputes about the meaning of the laws or allegations that the laws have not been implemented properly. It is crucial that the 3 organs do not intrude into the domain of another organ, unless the Constitution allows them to do so in order to ensure that the Constitution will not be undermined/violated. However, this must be understood with reference to the notion of checks and balances. Accordingly, the separation of powers doctrine is epitomised by the allocation of defined functions, competencies and responsibilities to the principal organs of state that takes the form of an "institutional, procedural and structural division
of public power” with a view towards achieving protection of fundamental rights in society. This is particularly true when one has regard to South Africa’s transformative constitutional democracy.

It is not expressly mentioned anywhere in the Constitution, but we know it exists because it has been specifically referred to in the Certification case; as well as De Lange v Smuts NO; and Glenister. In De Lange v Smuts NO, the Court held:

over time our courts will develop a distinctively South African model of separation of powers, one that fits the particular system of government provided for in the Constitution and that reflects a delicate balancing, informed both by South Africa’s history and its new dispensation, between the need, on the one hand, to control government by separating powers and enforcing checks and balances and, on the other, to avoid diffusing power so completely that the government is unable to take timely measures in the public interest.

In the South African context, the doctrine of separation of powers does not require a strict separation between the judiciary and the legislature and executive because it requires the judiciary to check whether the other branches comply with the law and exercise their authority in conformity with the Constitution (known as judicial review). The result is that the judiciary should not interfere in the political functions and processes of other branches of government unless to do so is mandated by the Constitution (such as where the executive is manifestly failing to comply with its constitutional obligation to provide anti-retroviral treatment, or education, or housing, etc.). Accordingly, the division of powers is not strictly enforced: if it appears that one sphere of government is failing to comply with its constitutional obligations the judiciary must intervene to uphold the Constitution.

In Glenister (I), the Court held:

separation of powers is “axiomatic” in the Constitution (albeit not expressly stated); it is a necessary component of the doctrine of the separation of powers that courts have a constitutional obligation to ensure that the exercise of power by other branches of government occurs within constitutional bounds. [However] it should not be assumed that the Parliament will not correct the potentially unconstitutional provisions … the court may intervene in the legislative process only if no effective remedy would be available to the applicant once the law is passed and the harm would be material and irreversible … But even in these circumstances, courts must observe the limits of their powers.

Using this case, it is easy to see that when a court is undertaking the process of judicially reviewing any legislation or executive conduct, the judges carefully inquire into the constitutionality of the legislation or the conduct of the executive, but cannot (and do not) simply substitute their own views for those of the legislature or executive (unless they have no choice, like what happened in the Treatment Action Campaign case). The judiciary upholds the separation of powers doctrine and defers to the authority and expertise of the legislature or executive who is then required to draft a new law which conforms to the Constitution or to rectify the irrational and unconstitutional executive decision.

The Glenister case relates to the disbanding of the Scorpions and the creation of the Hawks through the enactment of the National Prosecuting Authority Amendment Act and the South African Police Service Amendment Act, which were both declared unconstitutional for the fact that the Hawks were not sufficiently independent and that the state had therefore failed to comply with its obligations to respect, protect, promote and fulfill the rights in the Bill of Rights as required by section 7(2) of the Constitution. The Constitutional Court therefore held that what
was required was to create an anti-corruption unit with the necessary independence to be protected from potential political pressure. This meant that the state could not create a body that it claimed was independent but that did not appear independent to the reasonable member of the public. Secondly, such a body had to be insulated from “a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit” (although this did not mean that such a body had to be insulated from political accountability) and thirdly, the Hawks are “ordinary” police officials who enjoyed little if any special job security, which severely undermines their independence. Fourthly (and most importantly), there was the risk of political and executive influence over the Hawks because a Ministerial Committee, composed of at least the Ministers for Police, Finance, Home Affairs, Intelligence and Justice are required to determine policy guidelines in respect of the functioning of the Hawks (and quite possibly, therefore, decide which cases should or should not be investigated by the Hawks (think here of the cases against Jackie Selebi; Bheki Cele, etc. which had been successfully investigated and prosecuted by the Scorpions)). The result of all of this is that the judiciary did not re-write the law to create an independent crime-fighting institution. Instead, it left that up to the legislature to create a completely new institution with far more safeguards to secure its independence.

The Treatment Action Campaign case of 2002 is another possible example of when the judiciary is permitted to engage in executive decision-making because if it did not, thousands of babies would have been born HIV positive whereas this could have been prevented if the Department of Health had shown sufficient political willingness to provide nevirapine (the antiretroviral treatment which would prevent mother-to-child transmission of HIV). The Department of Health had repeatedly made excuses for why it could not provide antiretroviral treatment. The excuses ranged from inadequate hospital staff to administer the treatment; insufficient funds to purchase the medication; the fact that the safety and efficacy of the treatment had not been scientifically proven, etc. The Treatment Action Campaign was able to convince the Court that all of these excuses were invalid. The Indian government which produces nevirapine had donated over 5 million of the tablets to the South African government. All it took was a single dose of the drug to dramatically reduce the incidence of mother-to-child transmission of HIV, thus it was not labour intensive on the part of the hospital staff and a variety of tests conducted all over the world had shown that it was a very effective medication. In light of this compelling evidence, the judiciary was forced to assume the role of the executive by deciding that the nevirapine should “immediately” be provided to all pregnant women who were HIV positive. Even though that type of decision is ordinarily made by the executive because they have the knowledge and expertise about whether they are able to perform that type of duty, in this instance where the executive was failing dismally and with no good reason to provide nevirapine, the judiciary stepped into the role of the executive. While it may appear to be a violation of the separation of powers doctrine, it actually is not because the Constitution states that everyone has the right to health care.

Another possible example to illustrate how the separation of powers doctrine operates in South Africa is the case of Fourie v Minister of Home Affairs and Another (in conjunction with the Lesbian and Gay Equality Project case).

In the Fourie case, Ms Marié Fourie and Ms Cecelia Bonthuys argued that the law excluded them from publicly celebrating their love and commitment to each other in marriage. They contend that the exclusion comes from the common law definition of marriage which states that “marriage in South Africa is a union of one man with one woman, to the exclusion, while it lasts, of all others".
The case raised the question whether the fact that no provision is made for the applicants, and all those in like situation, to marry each other, amounts to denial of equal protection of the law and unfair discrimination by the state against them because of their sexual orientation, contrary to the provision of the Constitution guaranteeing the right to equality and dignity. Meanwhile, the case of Lesbian and Gay Equality Project and Eighteen Others v Minister of Home Affairs and Others was set down to be heard in the High Court and was lodged as a challenge to the provisions of the Marriage Act. The Applicants then applied for direct access to the Constitutional Court so that these two cases could be heard simultaneously.

In delivering judgment, the Constitutional Court held that it had in five consecutive decisions highlighted that South Africa has a multitude of family formations that are evolving rapidly as our society develops, so that it is inappropriate to entrench any particular form as the only socially and legally acceptable one; there was an imperative constitutional need to acknowledge the long history in our country and abroad of marginalisation and persecution of gays and lesbians although a number of breakthroughs had been made in particular areas; and there was no comprehensive legal regulation of the family law rights of gays and lesbians. The Court unanimously found that the common law and section 30(1) of the Marriage Act were inconsistent with sections 9(1) and 9(3) [equality] and 10 [dignity] of the Constitution to the extent that the law as it stood made no provision for same-sex couples to enjoy the status, entitlements and responsibilities they accord to heterosexual couples. The Court held that a new Act would have to be formulated to give legal recognition to all marriages, including those of same and opposite-sex couples. In doing so, the court was sensitive to the separation of powers doctrine because instead of imposing itself and writing a law to govern marriages, it gave Parliament one year in which to cure the defect by drafting the Civil Unions Act.

Over the course of 2006, a Bill was drafted governing civil unions. The Bill became law on 28 November 2006 and it permits the “voluntary union of two persons who are both 18 years of age or older, which is solemnized and registered by either a marriage or a civil partnership, to the exclusion, while it lasts, of all others”. In this case the court did manage to strike an appropriate balance between upholding the Constitution and respecting the functions and powers of the legislature because the court did not dictate to the legislature exactly what the law should state, but it merely provided guidelines confirming that whatever law was passed, it had ensure the human rights of all South Africans, irrespective of their sexual orientation.

QUESTION 5

5.1 The Durban Municipality recently passed a by-law to the effect that refuse removal will take place once a month, as opposed to the current once-a-week removal. The municipality stated that the reason for this was the rising fuel price and other pressures on the budget that had not been factored in. Refuse removal is a functional area listed in Part B of Schedule 5 of the Constitution.

Residents in the area affected are upset, since the long period between removal days is causing a huge build-up of refuse. The build-up attracts maggots, flies and other undesirable insects, thus creating an unhygienic environment with the potential of spreading diseases.
The national executive is alarmed at the passing of this by-law, as it believes that refuse removal at longer than weekly intervals creates serious health risks for the public and that it amounts to a violation of the right to a clean environment. The cabinet therefore drafts a Bill which is passed by Parliament in terms of section 76(1) of the Constitution. This Act provides for refuse to be removed once a week, notwithstanding the provisions of any by-laws. The Durban Municipality wishes to challenge the legislation on the basis that it is unconstitutional.

Provide a fully reasoned opinion in which you advise the Durban Municipality on the likelihood of its challenge being successful. (12)

**Issue**
The issue is whether Parliament can intervene and pass a law which will prevail over the municipal by-law?

**Relevant law / rule of law**
The Constitution is the supreme law of the land and all law and all conduct must conform to it.

According to Chapter 3 of the Constitution, co-operative governance in South Africa is divided into three spheres: national, provincial and local and power is divided between them, but it is permissible for one of the spheres to override the decision of another if the Constitution permits it if this is necessary to resolve a conflict of laws between two spheres.

There is a stipulated method of resolving conflicts, depending on whether competencies have been conferred exclusively or concurrently, which is as follows:

- b. Concurrent competencies – schedule 4. Section 146 applies
- c. Residual – not listed in either – falls under national.

Municipalities have original constitutional authority to pass laws in respect of matters listed in Schedule 5, Part B. The relevant function referred to here is "refuse removal, refuse dumps and solid waste disposal". Specific reference is made to sections 155(6) and 155(7) of the Constitution. Section 155(6) obliges national and provincial governments to monitor and support local government. Section 155(7) then goes further to state that national and provincial governments have executive and legislative authority to see to the effective performance by municipalities of their functions, subject to the provisions of section 44 of the Constitution.

'Pith and substance test'

Section 44(2) (c), (d) and (e) are relevant in the specific facts presented in this question because (c) refers to the need to maintain essential national standards, (d) refers to the establishment of minimum standards required for the rendering of services, while (e) refers to the needs to ensure that no prejudice is caused to other provinces.

*Ex Parte President of RSA: In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC).*  
*City of Cape Town v Robertson*  
*Executive Council of the Western Cape Legislature v President of the RSA 1995 (4) SA 877 (CC)*  
*City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*  
*Executive Council of the Western Cape Legislature v President of the RSA 1995 (4) SA 877 (CC)*
Application
An argument needs to be developed as to whether or not the national legislature has the right to intervene and pass a law which overrides the municipal by-law. Reference must be made to relevant case law, which is the case of Ex Parte President of RSA: In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC). In this case the Constitutional Court held that the scope and ambit of the matters set out in Schedule 4 and Schedule 5 of the Constitution must be interpreted in light of the model of government adopted by the Constitution and the manner in which the Constitution allocates power to the different spheres. As such, reference should be made to the fact that the local sphere has the right to enact laws because it has been conferred original constitutional powers in order to regulate its own affairs. However, this is subject to section 44.

Students need to apply the law to the facts by invoking section 44(c), (d) and (e) which would require that the national legislature intervenes because of the very harmful consequences which will invariably ensue due to the refuse only being removed once a month instead of one a week. There is no doubt that refuse lying around for a month will cause pollution of the air and waterways and it is quite possible that this pollution will be spread to other provinces through such waterways. There is an extremely high chance of disease arising as a result of the decision not to remove refuse weekly.

Reference could also be made to the case of Executive Council of the Western Cape Legislature v President of the RSA 1995 (4) SA 877 (CC) in order to illustrate the mutually-supportive relationship between the spheres of government.

Conclusion
Therefore, the students must conclude by indicating whether the national government has the right to intervene and pass the national legislation, or not. It is also advisable to include mention of the case of City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others, where it was held that while the national government is entitled to pass laws regulating the local government matters in Schedule 5, they are not entitled to pass laws giving themselves the power to administer or implement those laws; the municipalities themselves must exercise the power to do that. This gives meaningful effect to what was stated in the case of City of Cape Town v Robertson, which is that local government has original constitutional powers and remains an independent sphere, thus it should be entitled to decide how it will administer or implement a law that has been passed by the national legislature but that is imposed on the local sphere.

5.2 Section 89 of the 1996 Constitution provides for the removal of the President from his office. According to this section, who has the power to remove the President? On what grounds can the President be removed from office? Is there any other method provided for in the Constitution for the removal of the President from office? Explain fully with reference to the provisions of the specific section of the Constitution and relevant case law.  

Section 89 regulates the removal of the President from office. Section 89(1) dictates that 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 only on the grounds of: (a) a serious violation of the Constitution or the law; (b) serious misconduct; or (c) inability to perform the functions of office. These are objective grounds and the National Assembly can only remove the President in this manner on the basis of a finding that one or more of these grounds is present. This is also called impeachment and has potentially serious consequences.
There is also another method by which the President can be removed from office. This occurs for purely political reasons in terms of section 102(2) of the Constitution, but only if the National Assembly, by a vote supported by a simple majority of its members, passes a motion of no confidence in the President. If a vote of no confidence is instituted against the President, he/she will have to resign. Following the Constitutional Court’s judgement in *Mazibuko v Sisulu and Another* 2012, any member of the National Assembly can now propose a motion of no confidence in the President and have it debated in the National Assembly.

[20]

TOTAL: {100}