

**THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL. B DEGREE PROGRAMME – LEVEL 3
FINAL EXAMINATION (OBT – online) – 2020/2021
LLU3901 /LWU1201- CONSTITUTIONAL LAW I
DURATION – THREE (03) HOURS**



DATE: 13th September 2021

TIME: 1.00 pm. –4.00 pm

Total number of questions 06. Answer four (04) questions only.

Candidates will be penalized for illegible handwriting.

1. A series of continuous protests were organized by the Inter University Student Federation against privatization and militarization of education in diamond Island. Deshapriya, a union leader of the Inter University Student Federation in Diamond Island participated in one such protest held in front of the University Grants Commission which is situated in the capital City of Diamond Island. All Union members were holding up banners, posters and placards to convey their disagreement. While this protest was ongoing, a set of Police Officers monitored by the DIG of Police of the area came and interrupted the protesters stating that the Police have granted a court order to stop the protest. Further, all the participants of the protest were asked to undergo a Rapid Antigen Test due to the Prevailing pandemic situation of Diamond Island. The Protesters were asked to stop the demonstration immediately and coordinate with each other to get the Antigen Tests done. Protesters annoyed by the actions of Police moved forward, destroying all the road barriers. Deshapriya with some of his colleagues, went to a high security zone nearby and they started drawing cartoons on a wall criticizing the present government of the Island. While engaging in drawing, the army shot at the protestors following the orders of a senior official. Deshapriya died on the spot and two other students were seriously injured. Later, parents of Deshapriya came to know that the army officer was among the motorcade carrying the President and he was a friend of the President of Diamond Island.

- I. The President of Diamond Island granted Presidential Pardon to the army officer who carried out the shooting, preventing him from arrest and granting him immunity from any legal proceeding.
- II. Deshapriya's Father filed a fundamental Rights Petition against the President of the Diamond Island, challenging the decision for Presidential pardon.

Assume that the Constitution of Diamond Island is as similar to the Second Republican Constitution of 1978 in Sri Lanka. Do you agree with the actions of each party mentioned in the above scenario? Discuss. Your discussion should be supported with relevant Constitutional Provisions.

(Marks 25)

2. Read the following incidents and examine the validity of actions of each party in the light of the concept of Legislative Supremacy of the Parliament. Assume that the Second Republican Constitution of Sri Lanka is similar to that of the Constitution of the State Pearl.

- I. The government of State Pearl has submitted a bill for a constitutional amendment to add a provision to section **10** of chapter III and, section **6** of the Constitution. Accordingly, Section **10** of Chapter III declares the freedom of thought, conscience and religion as a Fundamental Right and section **6** is about the national flag. This bill is being challenged by civil organizations.
- II. The Amended section **12** of the Tourism Development Act of State Pearl provides a concessionary health scheme for the welfare of male employees and their family members during and after the retirement from their service. Further, this section declares that the special health scheme privilege is also given to the female employees and it will be ended on their retirement. The state Pearl has signed and ratified The International Covenant of Equal Rights of Employees (ICERE).

Article **9** of the ICERE deals with the right to equal pay for men and women.

(Marks 25)

3. According to Dr. L.J.M. Cooray, the Separation of Powers involves three different things:

- i) The same persons should not form part of more than one of the three organs of Government.
- ii) One organ of Government should not control or interfere with the exercise of the organs.
- iii) One organ of Government should not exercise the functions of another.

Reflections on the Constitution and the Constituent Assembly, (1971), p. 107

Do you think that the framers of the 1978 Sri Lankan Constitution neglected the importance of the above three factors? Discuss with practical examples, recent case law and Constitutional illustrations.

(Marks 25)

4. 'The greatest danger to independence comes from the interference of perceived or otherwise government institutions or political parties. In order to gain the confidence of the public, the key to fostering and establishing the 'Rule of Law' is to ensure that the judiciary is not only independent but appears to be independent'.

Assume that you have been invited to address the gathering of the National Law Conference. Prepare your speech on the topic 'predominance of the Rule of Law, sustained by an independent judiciary'.

Your speech should demonstrate your theoretical and practical knowledge on Judicial Independence and the Rule of Law.

(Marks 25)

5. There is an environmental disaster caused by a slow sinking of a fire ravaged cargo ship that has been loaded with chemicals on the coastline of the country named Indiana. The Government of Indiana decided to ban fishing along about 100km of coastline, as debris from the sinking ship including tons of chemicals continued to wash ashore. While fishing is still allowed in deeper water, sales of seafood have plummeted because consumers fear chemical contamination. Many people who depend on the fishing industry lost their livelihood due to the incident. Frustration grew among these communities because of lack of fish in the coastal seas. The government has not yet taken any action to provide a financial assistance to those who have lost their occupation.

Mr. Soysa, the president of the 'United Fishermen Society' of Indiana, summoned a meeting to discuss the consequences of long-term damage to marine life, the possible hazardousness of eating fish, health impacts and losing their livelihood.

After the meeting, they decided to engage in a silent protest by displaying posters and banners to force the government to provide them with financial support in this crucial situation. The day before the protest, despite the facts of his innocence, the police arrested Mr. Soysa and assaulted him severely and took him to the police station.

He was subsequently detained without being produced before a magistrate. Further, he was hit with a wire rod and kept in a dark room for more than four days. No water or food was provided. He was continuously assaulted and got into an unconscious state and was admitted to the hospital. After being hospitalized for about two months, his wife noticed that Mr. Soysa was having some physical issues as well as mental issues due to the unexpected hard time he had at the police station. Now he is not in a position to continue his occupation anymore and his family is in greater trouble.

The wife of Mr. Soysa, wishes to file a case before the court. Assume that you are a lawyer attached to a social welfare organization and that the Constitution of Indiana is similar to the Constitution of Sri Lanka, 1978. Advise Mrs. Soysa.

Your advice should be supported by the recent Constitutional developments in Sri Lanka in the relevant area.

(Marks 25)

6. 'The Westminster model introduced by the Soulbury Constitution can be recognized as the prime source which facilitated the post-colonial Constitutional developments in Sri Lanka'.

Do you agree with this statement? Critically discuss your answer with reference to the 1972 and 1978 Constitutions and the recent Constitutional developments in Sri Lanka. Provide recommendations to enhance the current Constitution of Sri Lanka. Your answer should be supported by practical scenarios.

(Marks 25)

**** *All rights reserved* ****