

**THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL.B DEGREE PROGRAMME – LEVEL 4  
FINAL EXAMINATION – 2020/21 (OPEN BOOK TEST)  
LLU4708/LWU2314 – CONSTITUTIONAL LAW II  
DURATION – THREE (03) HOURS**



**DATE: 2021. 09.09.**

**TIME: 9.30 a.m. – 12.30 p.m.**

Illegible handwriting will be penalized.

Total number of Questions 06.

**Answer 04 questions only.**

1) The fundamental rights enshrined in the Chapter III of the 1978 Constitution are *per se* incomplete. Judiciary has played an important role in determining the scope of the existing fundamental rights and introducing new dimensions to construe rights guaranteed by the fundamental rights chapter of the Constitution. Today, due to complex nature of the modern society, judges face challenges of providing proper interpretations in remedying to fundamental rights violations and thus restrict themselves within the ordinary meaning of the fundamental rights chapter.

a) Do you agree with the above statement? Analyze the above statement referring to appropriate Constitutional provisions and case law of Sri Lanka.

(20 Marks)

b) According to your analysis, what are the amendments to be made to the Chapter III of the 1978 Constitution of Sri Lanka? Explain, drawing examples from other jurisdictions.

(5 Marks)

2) In the wake of COVID 19 global pandemic, the World Health Organization (WHO) has declared Public Health Emergency of International Concern (PHEIC) on January 30, 2020. Since early March 2020, Sri Lanka has been affected by the corona virus, and a number of deaths among the corona patients belonging to various communities and religions were also reported.

From the inception of the pandemic, there was a conflict between the government's policy of burying all the death bodies of Covid 19 affected patients irrespective of their religion, and religious observances and beliefs regarding funeral rituals of some religions in the country. In response to this, on February 25<sup>th</sup>, 2021, the Government issues the

Extraordinary Gazette Notification No. 2216/38 authorizing the cremation or burial of the bodies of people who died due to COVID 19 subject to certain health guidelines.

The Ceylon Law Association, an independent association of lawyers, intends to publish the new Issue of their Journal under the theme 'The Covid 19 and Its Impact on Fundamental Rights in Sri Lanka'. This Issue expects to focus on the legal theory that the purpose of the law is to strike a balance between the competing interests among the people and the society.

As a law student, you are expected to write a Journal article on this matter. Write an article to the Journal explaining and analyzing the above matters in light of the fundamental rights of the people of Sri Lanka.

(25 Marks)

- 3) The 1978 Constitution of Sri Lanka introduced an effective mechanism for the enforcement of human rights recognized by the Constitution for the first time in the Sri Lankan constitutional history. However, due to the court's reliance on the strict procedural requirements of fundamental rights cases, early jurisprudence did not contribute significantly to the development of fundamental rights jurisprudence in Sri Lanka.

Select any **two** of the following requirements and discuss them in light of the above statement referring to the judicial interpretations given by the Sri Lankan Court over them.

- a) Executive and administrative action
- b) Infringement or imminent infringement
- c) One Month Rule
- d) Standing to sue

(12.5 x 2 =25 marks)

- 4) Saylan is an Island where devolution of power has recently been introduced to the governing system. This devolution of power is similar to that of Provincial Council System introduced in Sri Lanka. A statute referring to a subject matter enumerated under the Schedule 09 of the Concurrent List of the Constitution was passed in the Provincial Council by the newly appointed Chief Minister and the Board of Ministers of North Central Province of Saylan Island. According to the statute that referred to a subject matter coming under the Concurrent List of the Constitution, government contracts coming under the particular subject can also be awarded to any construction company within the Province determined by the Provincial Council Authority. After six months, acting under the power of the statute, the Provincial Council awarded a construction work to a company established in the Province. When the company was about to start the construction work, the Governor

of the North Central Province who visited the site, addressing the media told that granting permission for such project was in violation of the Constitution of the country and further ordered to stop the project with immediate effect. Few days later, the Governor, without consulting the Provincial Council, appointed the chief organizer of the opposition party of the Provincial Council as the Chief Minister. The former Chief Minister who secured the majority in the Provincial Council, managed to pass a no-confidence motion against the Governor.

In light of the above incident, discuss the legal position of the followings.

- I. The move of the Provincial Council to pass a statute covering a subject coming under the Concurrent List and the attempt to implement it in the Province.
- II. Removal of the Chief Minister and appointment of a new Chief Minister by the Governor
- III. Possibility of removing the Governor by the Provincial Council

Your answer should be supported by the relevant Constitutional Provisions and case law.

(25 Marks)

- 5) “....The concept of constitutionalism implies that government will conform its conduct to a law higher than ordinary legislation and that this body of higher law is set out in a document called the constitution or some other form of fundamental law. Modern constitutionalism generally imposes two different types of restraints upon the exercise of governmental powers: separation of powers and individual rights. By allocating powers among various branches of government and diverse political units and by guaranteeing certain fundamental rights against governmental intrusion, modern constitutions act as important limitations upon governmental power”

***Keith S. Rosenn (1990)***

Critically analyse the relevancy of the above statement in light of the recent constitutional amendments and relevant constitutional provisions of Sri Lanka.

Support your answer with relevant case law and examples.

(25 Marks)

- 6) You have been named as a member of one of the ad-hoc committees appointed to make proposal to the Constitutional Evolution Assembly of Hogwarts Island. You are expected to report to the Council under the topic “Executive and Legislative powers of Provincial Councils: Application of Law and Challenges”.

Write your report elaborating on the composition, duties, responsibilities and the efficacy of Executive and Legislative Powers of Provincial Councils.

Suppose that the Provincial Councils System in Hogwarts Island is similar to that of the Provincial Council system of Sri Lanka.

(25 Marks)

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