

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL.B DEGREE PROGRAMME – LEVEL 4  
FINAL EXAMINATION – 2021/22  
LLU4708 – CONSTITUTIONAL LAW II  
DURATION – THREE (03) HOURS



DATE: 25. 01.2023

TIME: 9.30 a.m. – 12.30 p.m.

Candidate will be penalized for illegible hand writings

Total no. of questions: 8

Answer five (5) questions only, selecting at least Two questions (02) from each Part I and II

Each question carries 20 marks

**PART I**

1. 'A declaration of fundamental rights is seen in most modern constitutions. [...] The elevation of rights to constitutional status gives them a sanctity that the state may not violate'

Jayampathy Wickremaratne, Fundamental Rights of Sri Lanka, 3<sup>rd</sup> ed. p.9

Discuss the relevance of the above statement to the Sri Lankan context, in the light of the post-independence constitutional history of Sri Lanka. Your answer should elaborate on how the notion of constitutional protection of human rights was progressively institutionalized during the post-independence constitution making processes.

2. Prabath is an independent journalist working in the social media space. His Youtube channel is one of the mostly viewed ones that contains commentaries on contemporary social and political issues. He is well known for making controversial statements. In a recently uploaded video, which discusses about banning the selling of alcohol during religious holidays, Prabath made the following statement:

'...I do not think the state should close down liquor stores during so called religiously important days. Though we do not speak about in public, we all know that members of our clergy are also seasoned *bebaddas* (drunkards) like laymen. These hypocrites cannot dictate rules on our lifestyle'.

The video went viral and the use of the term *bebaddas* to refer to the clergy provoked an angry response from many religious quarters. Upon a complaint received by the police, Prabath was arrested on 3<sup>rd</sup> of May 2022 when he was returning home from work. The OIC of the relevant police station, who was personally agitated due to Prabath's statement locked him in a separate cell in the police station for two days. Prabath was ordered to strip down and was kept naked at the cell during the entire

detention period. Police officers including the OIC time to time visiting the cell verbally abused the detainee while threatening him that 'he will be taught a lesson'. He was only given a single meal per day, and the meal consisted of porridge which Prabath later described as 'stinks'. He was produced before a magistrate on 6<sup>th</sup> of May 2022. Police charged him under the offence 'inciting hatred among communities'. After been released on bail, Prabath anticipates to file a fundamental rights application against the conduct of the police.

Assuming you are the lawyer of Prabath, prepare a note on possible claims he can invoke. In preparing the note, you should also discuss possible counter-claims the respondent might rely upon.

3. The most striking achievement in the fundamental rights jurisprudence established under the 1978 constitution is perhaps the broader meaning our courts have attributed to the notion of equal protection before law.

Do you agree with this statement? Critically analyze the above statement with reference to relevant case law.

4. State Peekaboo is a developing country that is pursuing an aggressive economic development agenda. As a part of its new economic policy, the country has privatized a large number of previously state-owned enterprises including the electricity board of the country. The electricity board is now own by a public listed company known as Pekaboo Electro PLC. The state owns 49% shares of the company, whereas the majority shares are owned by a foreign corporation.

Pekaboo Electro decides to implement following measures:

- Impose a higher tariff rate for the electricity supplied in rural areas. The company claims that since the demand for electricity in rural areas is low, a higher tariff would allow the company to function without making losses. Mr. Guha who is a community activist working with farming communities in rural areas believe that the new decision would exclude a significant number of rural residents from having access to electricity.
- Initiate a new project to build twenty mini-hydropower plants focusing on several rivers and streams throughout the country. Environmentalists have raised concerns about the possible harm mini-hydro power plants would have on the surrounding environment. A civil society organization called Earth-Mates writes to the company requesting information about the proposed project. The company refuses to provide any information.

Mr. Guha and Earth-Mates seek your advice on the possibility to file a fundamental rights application challenging the decisions by Pekaboo Electro. Advise them on the following:

- (a) Whether a case can be brought against Pekaboo Electro;

(b) grounds the petitioners can rely on and

(c) whether Mr. Guha and Earth Mates are eligible to file the petition.

Assume that the constitution and the fundamental rights jurisprudence of Pekaboo is similar to Sri Lanka. Justify your answer with relevant case law.

## PART II

5. 'Countervailing majoritarianism has been at the heart of the notion of liberal constitutionalism. Thus, constitutionalism has sought to prevent the emergence of the tyranny of the legislature'.

In light of the above statement, critically discuss to what extent the Republican constitutions in Sri Lanka reflect the norm of liberal constitutionalism. You are expected to draw comparisons from two other jurisdictions in your answer.

6. Assume that you have been appointed as a research assistant to a government commission that works on improving the devolution structure in Sri Lanka. As a part of the assignment, you are required to submit a case report on *re: 13<sup>th</sup> amendment to the constitution (1987) 2 Sri. LR 312*. The commission requires you to brief both the majority and minority judgements. Further, the court seeks your opinion on whether the interpretation given by the Supreme Court to the scope of Provincial Councils in the judgement is compatible with a broader vision of devolution.
7. 'Though different in their scopes all power sharing arrangements such as federalism, devolution and decentralization aim to ensure a more responsive and accountable system of democratic government; but also offer a wide scope for political pluralism'.

Discuss the above statement with reference to how power is shared between the center and peripheral units in three selected jurisdictions of your preference including Sri Lanka.

8. Write brief notes on the following.
- (a) Provincial high courts
  - (b) Governor's role in the provincial council system
  - (c) Provincial public service
  - (d) Relationship between the parliament and legislative powers of provincial councils

