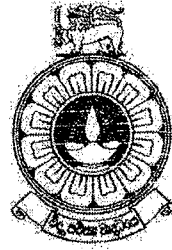


THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB (HONS) DEGREE PROGRAMME- LEVEL 3
FINAL EXAMINATION- 2022/2023
LLU 3604 – CONSTITUTIONAL LAW 1
DURATION- 3 HOURS



DATE: 03 March 2024

TIME: 01.30 P.M – 04.30 P.M

Candidates will be penalized for illegible handwriting.

Total number of questions 08.

Answer 05 questions only.

1. 'Constitutionalism signifies a complex of ideas, attitudes and patterns of behaviour elaborating the principle that the authority of government derives from the fundamental law.'

Done.E.Fehrenbacher, *Constitutions and Constitutionalism in the Slaveholding South* (University of Georgia Press, 1989) 1.

In light of the above statement, explain the main values and substantial principles of Constitutionalism.

(20 Marks)

2. 'According to a strict interpretation of the separation of powers, none of the three branches may exercise the power of the other, nor should any person be a member of any two of the branches, instead, the independent action of the separate institutions should create a system of check and balance between them.'

Benwell. R and Gay. O *The Separation of Powers* (Standard Note: SN/PC/06053 Last updated: 15 August, Parliament and Constitution Centre) 2.

Evaluate the above statement by taking examples from the United States of America, the United Kingdom and Sri Lanka.

(20 Marks)

3. Newsterdam is a democratic and a dualist state in South Asia. Members of the parliament in Newsterdam intend to pass a new legislation for the prevention of online defamation. However, several provisions of the Prevention of Online Defamation Bill (the Bill) are inconsistent with the Newsterdam Constitution. In addition, Sections 2 and 4 of the Bill are contrary to the provisions of an international convention that Newsterdam has ratified. A civil society organization called 'Power of Citizen' filed a petition in the Supreme Court of Newsterdam to challenge the constitutionality of the Prevention of Online Defamation Bill. In the meantime, Bala, the Minister of Foreign Affairs in Newsterdam conducted a news brief and stated that the parliament has unlimited and unfettered power to enact any law whatsoever.

Assume that you are a member of the 'Power of Citizen' organization.

Considering the constitution of Newsterdam is similar to that of the 1978 Constitution in Sri Lanka, prepare a report on the above situation with particular reference to the concept of supremacy of parliament.

(20 Marks)

4. 'Thus, the concept of independence of the judiciary denotes the collective independence of the judicial body from the undue influence of the other two branches of the government, as well as individual independence of the judges in carrying out their adjudication duties.'

Shetreet S. *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, In *Judicial Independence: The Contemporary Debate* 594 (Shimon Shetreet & Jules Deschane eds, 1985).

Critically examine the above statement with reference to the 1978 Constitution of Sri Lanka.

Support your answer with decided cases, constitutional provisions and contemporary examples.

(20 Marks)

5. Michael, a young journalist of good repute in the Democratic Socialist Republic of Sealand, was going to report an incident which happened between a politician called Tonal and another person called Harry. According to the report Tonal shot Harry to revenge based on a personal reason. When Michael was going to report this incident, he was forcibly dragged out of his van, grabbed by his hair roughly, manhandled by two police officers and then arrested Michael without explaining the reason. Furthermore, Tonal has not been arrested for the shooting Harry yet, and police officers have even

failed to investigate the incident. Police officers state that, as Tonal d is a member of the parliament, he cannot be arrested in the same manner.

Examine the above factual situation in the light of the concept of Rule of Law.

Assume that the Constitution of Sealand is similar to that of 1978 Constitution of Sri Lanka. Support your answer with relevant constitutional provisions and decided cases.

(20 Marks)

Answer either question **6 (a)** OR **6 (b) only**.

EITHER

6. (a). 'The silent and secret expression of a citizen's preference between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression than the most eloquent speech from a public platform.'

Karunathilaka and Another v. Dayananda Dissanayake, Commissioner of Elections and Others (1999) 1 SriLR 157.

According to the above statement, explain the legal provisions and key principles related to the electoral system in Sri Lanka.

(20 Marks)

OR

- (b). 'When deriving meaning from the text of the constitution, the Supreme Court has relied on certain methods or modes of interpretation – that is ways of figuring out a particular meaning of a provision within the Constitution.'

Brandon J. Murill, *Modes of Constitutional Interpretation* (March 15 2018 Congressional Research Service).

Critically analyse the different methods, used by judges in interpreting Constitutional provisions.

Support your answer with relevant examples.

(20 Marks)

7. Mr. Thompson was elected as the new executive president of the Democratic State of Newland Island in South Asia. On International Women's Day in March 2023, he

announced that he has decided to grant a special presidential pardon to Anne who was sentenced to death by the Supreme Court of Newland in 2018, for killing a family of three. A considerable number of criticisms were raised that President Thompson's action of granting a special presidential pardon to Anne is biased, arbitrary, and illegal. According to the Presidential secretary of Newland the pardon was granted considering the reports submitted by the Prison Department and several other state institutions.

Assume that the Constitution of Newland is similar to that of the 1978 Constitution of Sri Lanka.

Evaluate this situation referring to relevant constitutional provisions and case law.

(20 Marks)

8. Write notes on any TWO of the following.

- a) Classification of constitutions
- b) Parliamentary privileges
- c) Fundamental rights in Sri Lanka
- d) Salient features of the 1947 Constitution of Sri Lanka

(10×2= 20 Marks)

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