

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME - LEVEL 4
FINAL EXAMINATION-2022/2023
CONSTITUTIONAL LAW II – LLU4708



Date: 21.03.2024

Time: 09.30 a.m. – 12.30 p.m.

Duration- 3 hours

Total number of questions are 8.

Answer any FIVE (05) questions only.

Candidates will be penalized for illegible handwriting.

(1) Amani is an Inspection Officer attached to the Labour Department of Aristria. On March 2023, the Labour Department called for applications for the newly vacant Senior Inspector Officer post, which is a grade higher to the post of Inspection Officer. Despite the fact that traditionally Senior Inspector Offices of the Department have always been men, Amani decided to apply for the post as she thought she possessed the relevant qualifications. The regulations for the promotions issued by the Labour Department required a competitive internal examination, and an interview for the shortlisted candidates who scored the highest marks at the examination. Five candidates were shortlisted from the examination held in September 2023, and Amani was among those five. When attending the interview that held subsequently, Amani realized that she has been the only female candidate to be shortlisted. The interview panel was consisted of male officers. At the interview held in December 2023, certain questions were posed to her, which made her feel embarrassed. Following are some examples:

- *What is your marital status?*
- *Do you intend to have Children any soon?*
- *If you have children, won't you have to obtain maternity leave, and make the post temporary vacant?*
- *As a woman, do you think you can effectively hold responsibilities as the senior inspector officer?*
- *Are you aware that no woman has ever held this position before?*

After the results were released in January 2024, Amani found that she had not been selected for the position. She feels that she was unjustly rejected due to her gender. She seeks your advice to file a Fundamental Rights application before the Supreme Court. Assume the constitution in Aristria is identical to the Sri Lankan constitution. Advice Amani referring to relevant constitutional provisions and judicial authorities.

(20 marks)

(2) John Bass serves as a journalist attached to the *Riverhouse Publications* which is one of the leading newspaper houses in the state Dimensia. The state of Dimensia entered into an agreement with Aristria Constructions LTD. – a private construction company of neighboring Aristria, granting the license to the company to initiate a mega housing project targeting middle class urban dwellers. The proposed location for the project – a vast empty land area in Dimensia's capital - was owned by the Urban Development Authority of Dimensia, and has been used by inhabitants of the city for recreational activities for decades. After learning that an agreement was signed, John Bass became interested in obtaining information concerning the agreement as he thought that this was a matter of public interest. When inquired about the agreement, the Urban Development Authority refused to disclose any information on the grounds that revealing such information would be detrimental for international economic relations. John Bass seeks considers the rejection to disclose information amounts to a violation of his rights. Assume Dimensia's constitution is similar to the Sri Lankan constitution. Discuss the grounds on which John Bass can file a Fundamental Rights application in light of rules concerning *locus standi* under the constitutional rights jurisprudence. (20 marks)

(3) 'Concepts such as [...] "freedom of speech and expression, including publication", occurring in a statement of constitutionally entrenched fundamental rights, have to be broadly interpreted in the light of fundamental principles of democracy and the Rule of Law which are the bedrock of the Constitution.'

- Fernando J. in *Karunathilaka and another v. Dayananda Dissanayake* [1999] 1 SLR 157 at 173

Do you consider the above statement accurately reflects the approach the Sri Lankan judiciary has adopted in construing article 14 (1) a of the constitution? Critically discuss with reference to relevant case law. (20 marks)

(4) The government of state Thamale declared a special police operation with the objective of eradicating drugs from the country. Ahanaj is a thirty-year old trishaw driver, living in the capital city of Thamale. Ahanaj has a record of been remanded for minor offences, including drug related allegations in the past. One day, at around 11.30 PM, Ahanaj's trishaw was stopped at the neighborhood police post. The police searched his trishaw, and checked his documentation. Though all the documents were in order, and the policemen did not find anything suspicious in the trishaw, the policemen in duty ordered him to come with them to the police station. When objected to that order, one policeman threateningly said the following:

'...Your looks show that you are a shady fellow. We know about people living in shanties. Especially about you and your gang. Without causing trouble come along with us, otherwise you will face consequences'

Ahanaj was taken to the police station and was kept in police custody throughout the night. Around 5 A.M. he was taken out from the cell and was taken to an adjunct room by a few policemen in civilian clothing. At the room, he was asked to do push-ups, and after each push-up he was slapped and punched by individuals present. This took place for around fifteen minutes. Afterwards, he was taken back to the cell. In the morning, the Officer in Charge convened him, and informed that he can leave. While advising him to show some respect to law enforcement officers, the Officer in Charge also told him not to reveal what happened while he was in custody. After Ahanaj returned home, his wife observed bruises all around

his body, and upon learning what happened, asked him to get admitted at the hospital. Further, she seeks to commence legal action against the police.

Assume you are Ahanaj's attorney-at-Law. Discuss on what grounds Ahanaj can file a Fundamental Rights application. Also discuss whether Ahanaj's wife can file the application on behalf of her husband. (20 marks)

5. (a) Assume that you are invited to deliver a speech to the annual National Law Student's Conference on the topic 'constitutionalism and its comparative uses'. You are supposed to explain the doctrine of constitutionalism with reference to two comparative jurisdictions. Prepare an outline for the speech.

(12 Marks)

(b) How would you describe the relationship between constitutionalism and devolution of power? Explain with appropriate examples.

(8 Marks)

(20 Marks)

6. 'The thirteenth amendment to the constitution of Sri Lanka has established a system of devolution, creating a provincial tier of government. However, those who are interested in a deeper power sharing have been critical about certain aspects of the amendment, that restricts the autonomy of Provincial Councils.'

Discuss the above statement with reference to two (02) shortcomings that you identify in Sri Lanka's Provincial Council system. Recommend possible solutions to the problems that you identify. (20 Marks)

7. (a) Examine how the Supreme Court of Sri Lanka defined 'unitary' and 'federal' states in the case *Re: thirteenth Amendment to the Constitution*. How did these definitions were applied in concluding that the thirteenth amendment fell within the ambit of a unitary state? (12 Marks)

(b) In light of the above distinction between federal and unitary states, discuss about the basic aspects of any two foreign jurisdictions of your choice that represents a (a) federal constitutional order and (b) a power devolution model within a unitary state structure respectively. (8 Marks)

8. Write short notes on the following.

(a) Provincial public service

(b) Decentralization and devolution

(c) The concurrent list

(d) Governor's role under the 13th amendment
