

THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LL.B DEGREE PROGRAMME 2023/2024
 LEVEL 4
 FINAL EXAMINATION
 LLU 4708 – CONSTITUTIONAL LAW II
 DURATION – THREE (03) HOURS



Date: 03 May 2025

Time: 01.30 p.m.- 04.30 p.m.

The candidates will be penalized for illegible handwriting.

Total Number of questions: 08

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. “The silent and secret expression of a citizen’s preference, as between one candidate and another, by the exercise of his right to vote is an exercise of the freedom of speech and expression.”

Fennando J in *Thavaneethan v. Dayananda Dissanayake, Commissioner of Elections and others* [2003] 1 Sri. L.R 99

The Sri Lankan judiciary has shown a progressive tendency of offering an expansive reading to Article 14(1)(a) of the constitution. Do you agree with this statement? Referring to relevant case laws and statutory provisions, discuss to what extent this statement reflects the approach of our Supreme Court in interpreting the meaning of the article 14(1)(a) of the constitution.

(20 Marks)

2. Write case notes on any **TWO (02)** of the cases given below.

- I. *Environmental Foundation Limited v Urban Development Authority of Sri Lanka and others*. [2009] 1 Sri.L.R.123
- II. *Rienzie Perera and Another v University Grants Commission and Another* (1978-79-80) 1 Sri.L.R. 128

III. *Channa Pieris and others v. Attorney General and others* (Ratawesi Peramuna case) [1994] 1 Sri.LR 1

IV. *Amaratunga v Sirimal and Others* (Jana Ghosha Case) [1993] 1 Sri L R 264
(10 x 2 = 20 Marks)

3. The following incident took place in a country named “Siyara”, where the legal and constitutional framework is identical to that of Sri Lanka.

Nadee is a popular social media activist and podcaster. Her YouTube channel is one of the mostly viewed ones that contains commentaries on contemporary social and political issues. In one of her recent podcast episodes, she criticized a government proposal to implement mandatory dress codes in public institutions on religious grounds. During the podcast, she stated:

“The government should not force people to follow dress codes based on one religion. If we are being honest, even some religious leaders don’t always follow the values they talk about...”

The episode went viral and received backlash from several religious organizations, who claimed her comments insulted their faith. A few days later, Nadee was arrested at her home by police officers. She was detained for three days without access to legal counsel or her family. During her detention, she was repeatedly interrogated without legal representation, denied proper food, and allegedly subjected to degrading treatment by female officers of her personal beliefs. After three days, she was produced before a magistrate and charged under laws relating to “promoting disharmony among religious groups.”

After being released on bail, Nadee wishes to file a fundamental rights petition against the conduct of the police and the violation of her fundamental rights.

Assuming you are the lawyer of Nadee, prepare a note on possible claims she can invoke. In preparing the note, you should also discuss possible counterclaims the respondent might rely upon. Refer to relevant constitutional provisions and case laws.

(20 Marks)

4. Assume that you have been appointed as a legal researcher to the Human Rights Commission of Sri Lanka. Your first assignment is to prepare a detailed analytical report on the application of the right to equality under the Sri Lankan human rights regime.

You are supposed to use both national and international legal provisions, case laws.

(20 Marks)

Part II

5. Assume you are a member of a research committee of the government commission which works on developing the devolution framework in Sri Lanka. You are required to prepare a case analysis of *In re the thirteenth Amendment to the Constitution and the provincial Council Bill* (1987) 2 Sri. L.R. 312. It requires you to discuss both the majority and minority judgments. Additionally, the commission seeks your opinion on whether the Supreme Court's interpretation of the scope of Provincial Councils aligns with a broader approach to the concept of devolution.

(20 Marks)

6. Write notes on any **Two (02) of the topics given below.**

- I. Features of Devolution
- II. Constitutionalism and Majoritarianism.
- III. Unitary form of Government and Federal form of Government
- IV. Comparison between Federalism and Devolution

(10 x 2 = 20 Marks)

7. Although provincial councils were given some powers by the 13th Amendment of the 1978 constitution of Sri Lanka, the councils are constrained by constitutional obstacles to use their powers. As a result, the provincial Council system has become an ineffective mechanism in Sri Lanka. Therefore, the Ministry of Local Government has decided to assess the weaknesses & strengths of the provincial Council system of Sri Lanka. Hence, the Ministry has requested you to write a report on the "Effectiveness of the provincial Councils in Sri Lanka" by focusing on the following.
- a) Legislative power of the provincial Council
 - b) Executive power of the provincial Council
 - c) Judicial power of the Provincial Council

Support your answer with relevant statutory provisions and case laws.

(20 Marks)

8. "The constitution was thus conceived as a protection of the people against all arbitrary action, on the part of the legislative as well as the other branches of government."

Friedrich Hayek', *The constitution of liberty*, P.178

Do you agree with this statement? Analyze the above statement with reference to the theory of constitutionalism. You are required to refer to relevant legal authorities to support your answer.

(20 Marks)