

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LL. B ( HONOURS ) DEGREE PROGRAMME – 2023/2024  
FINAL EXAMINATION – LEVEL 3  
LLU3604- CONSTITUTIONAL LAW I  
DURATION – THREE (03) HOURS



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DATE: 15<sup>th</sup> May 2025

TIME: 1.30 pm - 4.30 pm

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Total number of questions 08.

Answer five 05 questions only.

Candidates will be penalized for illegible handwriting.

Questions 01 and 02 are based on the following scenario.

Nourin is a democratic island located in South Asia. Following the sudden death of Mr. Sam, who served as President of Nourin, Mr. Romal, who was then serving as Prime Minister, was appointed as the new president to succeed the remaining of Mr. Sam's term by a majority vote in the country's parliament 2023. Even though Mr. Romal's term as president is supposed to end in December 2025, President Romal made a special statement to the nation, indicating that he hopes to postpone the scheduled presidential election by a year by considering the economic burden of a presidential election specially during the economic crisis of Nourin.

This controversial statement by the President triggered a massive reaction within the civil society of Nourin. Following this, the Leader of the opposition in the Nourine Parliament criticised the statement stating,

*"If any party tries to deprive the people of the opportunity to exercise their sovereign right to vote by postponing the elections, it must be defeated at the earliest opportunity"*

This political stigma led to protests broke out in various parts of the country. Due to these internal protests, President Romal declared a state of emergency in the country and summoned security chiefs to use military force to suppress the protests.

Furthermore, president Romal removed the Inspector General of Police that the IGP has failed to suppress these internal protests. Subsequently Mr. Reagan was appointed as the new IGP by president Romal. During his appointment fundamental right case was also pending against on the ground of attacking a peaceful protest launched by the students of national law university of Nourin. The opposition party of the Nourin government has alleged that the appointment of the new IGP was illegal because the decision was taken without the approval of the Constitutional Council in Nourin.

The YSA organization, a group of young social activists in the state of Nourin, filed a fundamental rights case in the country's Supreme Court, making President Romal a respondent, alleging that their fundamental rights are being violated by the appointment of the new IGP.

However, President Romal, in his preliminary objection, argued that he, as the Executive President of Nourin, enjoys special immunity from ' being sued ' and therefore cannot be named as a respondent in the fundamental rights case.

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

01. (a) What are the constitutional violations that have occurred in the state of Nourin in relation to the above series of events? Discuss with reference to the relevant constitutional provisions.

(10 marks)

- (b) Discuss whether President Romal would be successful in his claim based on the presidential immunity.

Support your answer with relevant constitutional provisions and case law.

(10 marks)

(10 + 10 = 20 Marks)

02. Based on the above scenario, identify at least three (03) incidents where it needs to apply the principles of constitutionalism.

Support your answer with relevant constitutional provisions and case law.

(20 marks)

03. 'The citizen's right to vote includes the right to freely choose his representatives through a genuine election which guarantees the free expression of the will of the electors: not just his own. Therefore not only is a citizen entitled himself to vote at a free, equal and secret poll, but he also has the right to a genuine election guaranteeing the free expression of the will of the entire electorate to which he belongs. ...'

Egodawela v Dissanayake ( 2001 ) 1 SLR 177 ( SC ) P.179

Explain the legal provisions and key principles related to the electoral system in Sri Lanka, with special reference to the above statement

(20 marks)

04. 'Modern theory of 'separation of powers' does not accept that three branches perform mutually isolated roles, and accepts a need for coordinated institutional effort for good governance, albeit emphasizes on benefits of division of power and labour by accepting the three wings do have separate and distinct roles and functions that are defined by the constitution. All the institutions must act within their own jurisdiction and not trespass into the jurisdiction of other, beyond this, each branch must support each other in the general interest of good governance'.

*Dr. Ashwani Kumar v Union of India and another* [2019] 12 S.C.R., at P. 44.

Critically analyze the above statement, with particular reference to the traditional approach presented by Charles Montesquieu regarding the theory of separation of powers and the 1978 Constitution of Sri Lanka.

Support your answer with constitutional provisions, case law and contemporary examples.

**(20 marks)**

05. Korathota Amila, an organized criminal from the state of Raka, was in remand prison on charges of murder. While he was presenting to the Millitown Magistrate's Court on 28<sup>th</sup> February 2025, Amila was assassinated by an unknown gunman inside court premises. The suspect was arrested during a police raid after 12 hours of the assassination and 120 km away from the murder scene without questioning his innocence. Even though the police officers inspected the vehicle which was driving by the suspect they were unable to find anything suspicious.

The suspect was taken to the police station and was held in police custody for over four days without being produced before a magistrate. During the police custody the suspect was subjected to torture and inhuman treatment. Meanwhile, there was a media reporting in Raka stating that the suspect in police custody had been killed during the shootout occurred in the interrogation process.

Condemning the behaviour of the police The Raka Bar Association made a following statement:

"It is a legal responsibility of the police and the government to ensure the safety of suspects in their custody. However, a suspect should be punished for crimes that are believed to have been committed only after being prosecuted and convicted before a competent court. Such extrajudicial killings constitute a significant violation of the rule of law".

Examine the above factual situation in the light of the concept of the rule of law.

Assume that the legal system and constitution of the state of Raka are similar to those of Sri Lanka. Support your answer with decided cases, constitutional provisions, and contemporary examples.

**(20 marks)**

06. "That the law courts are necessarily subordinate or subject to parliament, they have no powers of judicial review and cannot scrutinise parliamentary legislation. Also, no law court (...) can ever rule or judge contrary to parliamentary legislation for they are bound always to decide according to them".

'The Nature of Parliamentary Sovereignty v Constitutionalism' by Bernard Wolley

Discuss whether the above statement demonstrates the actual application of the principle of sovereignty of Parliament in the contemporary constitutional practice in Sri Lanka.

Support your answer with relevant constitutional provisions and case law.

**(20 marks)**

07. As an independent researcher at the United Nations Institute for Training and Research (UNITAR), you have been asked by the Law Review Sub-Committee to assist in preparing the Strategic Plan for UNITAR for the period 2025–2030. The Sub-Committee request you to review the existing legal framework relating to independence of the judiciary in Sri Lanka by identifying the prospectus and challenges for future legal reforms.

Prepare a report with special emphasis on contemporary examples and case law.

**(20 marks)**

08. Write short notes on **any two (02)** of the following.

- a) Directive principles of state policy
- b) Living constitution method of interpretation
- c) Power of the President to pardon criminals
- d) Reforms introduced under the Donoughmore Constitution ( 1931 )

**(02 x 10= 20 marks)**

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