

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME - LEVEL 5
FINAL EXAMINATION 2006
CONSTITUTIONAL LAW II – LWU 2314



DURATION : THREE (03) HOURS

DATE : 08th April 2006

TIME : 9.30 a.m. –12.30 p.m.

ANSWER **FIVE** QUESTIONS ONLY WITH AT LEAST **TWO** FROM EACH PART.

Illegible handwriting will be penalized.

Part I – Fundamental Rights – Answer at least TWO questions from this part.

01. The President constituted “Tsunami Housing Board”(THB) to provide houses for tsunami victims. The Board of Directors of the THB comprised of 7 members of whom 4 are appointed by the Social and Welfare Minister. The rest are appointed from non governmental organizations (NGOs) involved in tsunami housing projects. The funds for housing and funds for the operation of the Board come from the Tsunami Housing Fund. Forty five percent (45%) of the Tsunami Housing Fund is contributed by the Ministry of Social and Welfare and another 45% is contributed by the funds collected by the NGOs for tsunami relief. The remaining 10% is provided by the Ministry of Housing and Infrastructure. This is the only institution operating within the country to reconstruct houses destroyed by the tsunami.

The President stated that providing relief to the tsunami victims is a major objective of the government.

Saman who lives in Pereliya lost his house by the tsunami. He comes to know that his home is not included in the list prepared by the Tsunami Housing Board for providing houses in the area and wishes to file a fundamental rights action against the THB.

Do you think that Saman’s action would be successful? Give reasons for your answer citing decided cases.

02. "The practice of torture is prohibited in all civilized societies. The fundamental nature of the right of freedom from torture or inhuman treatment is emphasized by the fact that it is an absolute right subject to no restriction or derogation under any condition,..."

Fundamental Rights in Sri Lanka-a commentary . by Justice S.Sharvananda. at page 69.

Discuss this statement in the light of the notion that fundamental rights are for the protection of human dignity.

03. Berty, the chief cartoonist of "*Kaputa*" newspaper was engaged in a protest with the fellow staff members of the newspaper against an information that the government is trying to ban the newspaper due to a cartoon published by Berty. The protestors displayed posters, banners etc and some members of the staff cheered by playing drums. The protestors had leaflets containing poems written by Silva, editor of the poem page of *Kaputa* newspaper. They danced reciting the poems. During the protest campaign the police attacked the protestors and destroyed the posters, banners, leaflets and drums. The police damaged the satellite disk antenna, belonging to the newspaper as well.

Berty, Silva and rest of the staff of the newspaper wish to file an action against the police for all the attacks.

Prepare a report on whether their action would be successful.

04. It is really hard to achieve equality among people when the world has become more and more unequal. Therefore the world should maintain inequality. But the law should treat all people in equal manner while there should be room for inequality where it matters.

Do you agree with this statement? Discuss with reference to decided cases and examples, the principle of right to equality.

Part II- Devolution- Answer at least TWO questions from this Part

05. Some feel that the 13th Amendment to the 1978 Constitution has made many important changes to the judicial power of the people. However it is apparent that the 13th Amendment has only rearranged the devolved power. It supports the above notion that the purpose of the 13th Amendment is to bring justice closer to the people.

Do you agree with this statement? Give reason for your answer adverting to decided cases.

06. It has been argued that the 13th Amendment to the Constitution violated the basic structure of the 2nd Republican Constitution of 1978, and that it has caused an impact on legislative and executive powers of the people. It has been argued that the Amendment has undermined, and therefore inconsistent with Article 82(1), Article 2 and Article 3 of the 1978 Constitution.

Analyse the correctness of this statement ,in the light of the post 13th Amendment experience.

07. The legislative power of a Provincial Council still remains within the concept of legislative supremacy of the Central Government. The power of the Provincial Council is subject to the power of the Central Legislature whose legislative power is devoid of any substantive limitation.

Do you agree with this statement? Give reasons for your answer.

08. Piyal, a member of a research group researching on devolution of power has been asked to analyse the following concepts by the chief of the research group. The concepts are Federalism, Decentralisation and Deconcentration.

You are expected to present analysis comparing the concept of devolution of power with those concepts referred to Piyal. Write your report with reference to examples.

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