

**THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME - LEVEL 4
FINAL EXAMINATION - 2006/2007
CONSTITUTIONAL LAW II – LWU 2314
DURATION : THREE (03) HOURS**



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DATE : 14th March 2007

TIME : 10.00 a.m. – 1.00 p.m.
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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. Samantha who is a leader of a trade union was arrested by the police when he was at his party headquarters on 14th February 2007 at 8.00 a.m. At that time Samantha asked for reasons for his arrest from the police. The police refused to give any reasons. The police officers scolded Samantha and forcibly took him to the jeep. While Samantha was being brought to the police station he was assaulted and slapped by the police. After taking to the police station he was locked up. While he was in the police custody, he was continuously questioned by the police officers. When he was being questioned he was subjected to various third degree methods by the police. He was kept in a room, which was lighted up with very strong lamps. At that time he asked for some water which the police refused. Around 10 a.m. in the morning of the following day Samantha was released by the police.

Under the above circumstances, Samantha wants to file a fundamental right petition against the police. Advise him.

02. In Purshottam Vs Desai (A.I.R. 1956 SC 20) Das C.J, observed that, "... it does not forbid reasonable classification for the purpose of legislation..., The classification may be founded on different bases; namely, geographical, according to objects or occupations or the like, what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration".

Comment on the above statement referring to decided cases.

03. The Muslim community of the State of Sri Pura organized a campaign in front of the National Television Headquarters to protest against the telecasting of the hanging of the former President of Iraq. They used banners, posters and dummies in their protest. Mr. Mohomad, the organizer of the protest made a speech and the protestors who got provoked by the remarks of Mr. Mohomad attacked the National Television Headquarters and damaged the nearby buildings. The police arrived at the scene, on the request of the Director of the National Television and attacked the protesters. The banners, posters and other materials used by the protestors were destroyed by the Police during the attack. Mr. Mohomad wishes to institute an action against the Police.

Advise him.

Assume that the Fundamental Rights chapter of the Constitution of Sri Pura is similar to the Fundamental Rights chapter of the Constitution of Sri Lanka (1978).

04. "What is meant by "infringement of a fundamental right by executive or administrative action" for which the State is liable? There is no definition of executive or administrative action in the Constitution and it was left to the Supreme Court to evolve a proper concept of executive or administrative action".

Justice S. Sharvananda, -Fundamental Rights in Sri Lanka(a commentary) : page 18.

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

Part II – Devolution of Power – Answer at least TWO questions from this part

05. When one thinks of devolution of power the first thing that strikes the mind is 'federalism'. But there are other ways in which power could be devolved within a Unitary Constitution. Therefore the difference between Unitary and Federal system based on devolution of power is always a doubtful issue.

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

06. When the governmental power is devolved, it leads to conflicts. When conflicts arise there is a need to have an independent body with powers to decide on such conflicts. Therefore it is important to have a system of judicial review under devolution of power.

Write your opinion on the importance of judicial review with reference to the above statement.

07. Critically evaluate the 13th Amendment to the Constitution 1978 with reference to the following views.

- Article 82 has become controversial by the 13th Amendment;
- Basic structure of the Constitution (1978) has been altered by the 13th Amendment; and
- Legislative power has been divided by the 13th Amendment.

08. Write notes on any **TWO** of the following.

- a) The Provincial High Courts.
- b) The Provincial Public Service.
- c) Decentralization Vs. Devolution.