

THE OPEN UNIVERSITY OF SRI LANKA  
LL.B. DEGREE PROGRAMME - LEVEL IV  
FINAL EXAMINATION - 2008 / 2009  
CONSTITUTIONAL LAW II -LWU 2314  
DURATION - THREE HOURS



Date: 27<sup>th</sup> March 2009

Time: 9.30 a.m. – 12.30 p.m.

Answer **FIVE** questions only selecting at least **TWO** from each part  
**Illegible handwriting will be penalised.**

**Part 1-FUNDAMENTAL RIGHTS**

**Answer at least 02 questions from this part**

01. Mr. Silva was born deaf and his preferred means of communication is sign language. He suffers from a number of medical conditions and has been warded for a number of days to receive treatment in the Colombo general hospital. The hospital never obtained the service of a sign interpreter to communicate with Mr.Silva. Mr.Silva contends that the absence of interpreters impaired his ability to communicate with doctors and other health care providers and thus increased the risk of misdiagnosis and ineffective treatment.

Mr.Silva has filed an application seeking a declaration that the failure to provide a sign language interpreter has violated his right to equality regarding access to medical care.

Assume that you are the Supreme Court judge who will decide this matter. Write your decision with relevant authorities.

02. "The rigid and tardy procedures commonly associated with governmental departments and the red tapism inherent in such slow motion procedures have compelled the government to resort to the device of public corporations to carry on these numerous commercial and industrial undertakings, which require professional skills of a highly specialised and technical nature. But by resorting to this device of the corporate entity the government cannot be permitted to liberate itself from its constitutional obligations in respect of fundamental rights which it and its organs are enjoined to respect, secure and advance."

Per Athukorale J. in *Rajaratne vs. Air Lanka Ltd. And others* (1987) 2 Sri L R 128

Discuss the scope and applicability of term "executive or administrative action" in Article 126 of the 1978 Constitution of Sri Lanka in the light of above statement.

03. The new president of country "X", Mr. Thompson has announced that citizens who belong to the Muslim community must give up their religion or take dismissal from their jobs. He also banned Muslim women from covering their heads due to security reasons. Riyaz and Nafna who are Muslims are both affected by these rules.

The Daily Leader newspaper is continuously publishing articles about this issue, mostly opposing the president's view. Now the government is trying to ban the newspaper. When the news paper staff engaged in a protest by displaying anti-governmental posters and banners, the police attacked and injured the staff and destroyed their banners and posters.

Discuss the rights of the following parties.

(a) Riyaz and Nafna

(b) Editor and reader of the Daily Leader newspaper.

Assume that the Fundamental Rights chapter of the constitution of country "X" is similar to the Fundamental Rights chapter of the Constitution of Sri Lanka (1978)

04. While Aravinda was transporting furniture from Kurunagala to his residence in Kaduwela he was stopped at a police checkpoint. The police searched the truck and asked for a bribe of 10,000 rupees, threatening Aravinda that he would be prosecuted for illegal furniture transportation if he did not comply with their request. Aravinda refused to give the money. Despite his protests of innocence, though he showed the officer the permit to transport the furniture, the police officer arrested and assaulted him severely and took him and the truck to the police station. He was subsequently detained without being producing before a magistrate and hit with a wire that injured him, causing him severe pain. When he cried for help and asked for water, the policemen offered him a cup containing acid instead of water. When Aravinda refused to drink it, the acid was forcefully poured in to his mouth. Consequently he died in the same day night.

Aravinda's wife Nimala wishes to file a fundamental rights case against the Police officers.

Advise Nimala.

## Part 11-DEVOLUTION OF POWERS

**Answer at least 02 questions from this part**

05. "By the exercise of the franchise the people of each Province elect their representatives, for the purpose of administering their affairs. The Governor is given a discretion in order to enable him to select as Chief Minister the representative best able to command the confidence of the Council, and thereby to give effect to the wishes of the people of the Province. That discretion is not given for any other purpose, personal or political."

Per G.P.S De Silva C.J in *Premachandra vs. Major Montague Jayawickrema and another (provincial governors' case)* (1994) 2 Sri L R 105 Comment.

06. According to the majority decision of the 13<sup>th</sup> amendment case, in respect of exercise of legislative powers no exclusive or independent power was vested in the provincial councils.

Do you agree with this statement? Give reasons for your answer citing decided cases and relevant constitutional provisions.

07. There is a criticism that the Provincial Councils have no control over the functions or operation of courts under the 13<sup>th</sup> amendment to the constitution. However it is apparent that 13<sup>th</sup> amendment has only re arranged the devolved power and brought justice nearer home to the citizen, reducing delay and expense.

Critically evaluate the above statement citing decided cases and relevant constitutional provisions.

08. Write short notes on any **TWO** of the followings.

- (a) Local government vs. Devolution.
- (b) Constitutionalism in the 1978 constitution.
- (c) The provincial public service.
- (d) Article 2 of the 1978 Constitution and the 13<sup>th</sup> amendment to the Constitution.

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