

THE OPEN UNIVERSITY OF SRI LANKA

LL.B DEGREE PROGRAMME - LEVEL III

FINAL EXAMINATION - 2008 / 2009

CONSTITUTIONAL LAW - LWU 1201

DURATION - 3 HOURS



Date: 2009. 03. 20

Time: 9.30 a.m. – 12.30 p.m.

Answer **FIVE** questions only.

Candidate will be penalized for illegible handwriting.

01. A fundamental rights petition filed by two public servants, Amarasinghe and Sumanapala in the Supreme Court of the Democratic Republic of Salvenia alleged that the former president of Salvenia, Robert Roundo was instrumental in illegally transferring state land meant for a 'public purpose' to build a private pleasure ground called 'Vinodha Uyana'. Robert Roundo refuted the allegation on the grounds that his involvement in the transaction was minimal since it was limited only to the action he was expected to take in his capacity as Minister of Finance and as the head of the Cabinet. Further, he stated that he had delegated this matter to Mr. Marindo who was acting as the secretary of the Ministry of Finance and it was Marindo who had abused the power delegated to him. However, after hearing the case the Supreme Court held that Robert Roundo had failed to act in a manner consistent with the duties of a public officer. It further held that the exercise of presidential powers must be carried out in accordance with the principle rule of law, and also with one's own conscience and sense of integrity, as owed to the people.

Critically examine the above judgment in the light of the principle of the Rule of Law. You should answer the question on the basis that the Constitution of Salvenia is similar to that of Sri Lanka.

02. (a) Analyze the history of the modern constitutional evolution of Sri Lanka. Your analysis should cover the period of 1802 up to the enactment of the Donoughmore Constitution.
- (b) "The Soulbury Constitution fundamentally proposed 'a Westminster model' of government. Some of the more distinct features of this model have permeated through all Independence Acts of former British colonies and into their new Independent legislatures."

Lakshman Marasinghe, *The Evolution of Constitutional Governance in Sri Lanka*, 1st Edn (2007) p.106.

Examine the salient features of the Soulbury Constitution in the light of the above statement. Support your answer with a discussion of the relevant constitutional provisions.

03. (a) The 1972 constitutional model can be considered as the beginning of a process of breaking away from the colonial model constitution. This change involved a complete break with the previous constitutional connections that Sri Lanka had with the United Kingdom.

Do you agree with this statement? Support your answer with relevant provisions of the constitution and case law. You are required to compare your analysis with two other jurisdictions.

- (b) Nimal, who is planning to enter law school next year became confused while reading an article about the Rosawa Constitution. He does not understand the following sentences which appear in the article.

- “The State of Rosawa has a **written, rigid and granted constitution**”
- “The state of Rosawa intends to change the current **unitary** constitution into a **federal** one.”
- “There are **three principle organs of government** in Rosawa”

You are required to explain these phrases to Nimal.

04. The State of Kavinia gained independence from Mariniya in 2007. Kavinia is in the process of formulating its First Republican Constitution. The Constitutional Assembly of Kavinia is of the firm view that the liberty and equality of all people in Kavinia can be best protected and promoted if the constitution contains comprehensive provisions pertaining to the independence of the Judiciary.

Do you agree with this view? Give reasons for your answer and illustrate it with examples drawn from the Second Republican Constitution of Sri Lanka.

05. (a) “...Parliament’s legislative authority includes power to make new arrangements under which future parliaments would not enjoy legislative supremacy. The argument that the doctrine of legislative supremacy must be retained is strengthened if it can be shown that the political system provides adequate safeguards against legislation which would be contrary to fundamental constitutional principles or the individuals’ basic rights.”

A. W. Bradley and K. D. Ewing *Constitutional and Administrative Law*, 12th Edn (1997) p. 85.

Critically evaluate the above statement in the light of the doctrine of the supremacy of parliament. You can support your answer with other constitutional principles which you consider relevant.

- (b) In a parliamentary democracy, a citizen has several safeguards against an oppressive or faulty government. Although each of these remedies is effective in particular situations, they all have limitations. The office of the Ombudsman is

one of those safeguards, which effectively contributes to the protection of citizens.

Do you agree with this statement? What improvements would you suggest in order to make the Ombudsman remedy more meaningful?

06. The State of Thinedha is facing an economic crisis due to the rising cost of rice over a period of more than 8 months. The reason given by the government for the increase was based on the sudden increase in rice prices on the world market. Recently, the price of rice on the world market fell by more than 70 percent. However the government of Thinedha was silent about this and the price of rice remained unchanged, in spite of public protests. Meanwhile, Ms. Jeewanthy who is a member of an opposition political party filed an action in the Supreme Court challenging the price of rice. After hearing the case, the Supreme Court ordered the government to reduce rice prices with immediate effect. However the cabinet of ministers has decided not to enforce the order made by the Supreme Court and stated that the government was no longer implementing court orders on the issue.

Krishanth and Nadeesha, two LL.B undergraduates, were discussing this situation. Krishanth takes the view that the power to fix prices of commodities belongs to the executive branch of government. However, Nadeesha argues that the judiciary is vested with the authority to judge whether the use of that executive power is reasonable, fair and not arbitrary or irrational.

Analyze the correctness of these arguments in the context of the appropriate constitutional principles. You are expected to support your answer with relevant constitutional provisions and cases. Assume the Constitution of Thinedha is similar to that of Sri Lanka.

07. As a student reading for a law degree, you have been requested to submit an extended essay on the topic of the Executive President under the 1978 Constitution. You are also expected to discuss the views against conferring unfettered powers on the office of President. In submitting this essay, you must cite and discuss the relevant constitutional provisions and case law.
08. Write short notes on any TWO of the following:
- (a) The Referendum;
 - (b) Constitutional Amendments;
 - (c) Social Action Litigation.

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