

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
MASTER OF LAWS EXAMINATION, 2016/17

CONSTITUTIONAL LAW

(Three hours)

Total number of questions: 04

Answer **Question No. 1** and any **Two** other Questions.

(Candidates will be penalized for illegible handwriting)

1. The newly elected government of Pearlina, which comes to power on the platform of effecting radical constitutional reforms including restructuring the State, appoints a Constitutional Reform Commission to recommend Fundamental Constitutional Guiding Principles based on which it wants to initiate talks with the different political parties which have been engaged in identity based politics in the country for nearly half a century.

The Commission is specifically requested to make its recommendations after consulting relevant stakeholders. A group of academics representing different communities appeared before the Commission and advocates that the State should be restructured as a liberal democratic one adhering to the principle of constitutionalism. Their main contention seems to be that such adherence would alleviate the fear of discrimination and oppression of all communities and thereby a healthy and stable nationhood can be created.

However, an equally powerful professional organization aligned to the two major political parties in the country in its presentation to the Commission argues that the constitution should retain the existing structure of the State and the system of governance. They contend that the supreme law of the land must be a home-grown one reflecting the ethos of the natives. They believe that inclusion of any borrowed ideals amounts to negate the right of self-determination of the entire nation.

You are appointed as the Chairperson of the Constitutional Reform Commission. The President of Pearlina requests you to organize a workshop for a gathering of academics and professionals drawn from all the communities and discuss with them the modern trend in constitution making for a plural society.

Assuming that the present State structure of Pearlina is similar to that of Sri Lanka, prepare the Paper focusing on the Fundamental Constitutional Guiding Principles with the view of reconciling the principle of constitutionalism with the demand for a home-grown constitution.

(42 Marks)

2. "The rule of Parliamentary sovereignty could not be changed by Parliament and could not, as a matter of law, be departed from by the courts. However, the courts did possess a political capacity to alter the fundamental rule of the British Constitution, and it was this capacity that they had exercised in *Factortame*."

In light of the above statement, discuss whether it is possible for Sri Lankan Courts to review any legislation for their constitutionality. Theoretical arguments should be supported by case law authority as well.

(29 Marks)

3. 'The underlying idea of entrenching certain basic and fundamental rights is to take them out of the reach of transient *political majorities*. The purpose is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of *political parties* who, by virtue of their majority, may come to form the government at the centre or periphery.'

Discuss to what extent the constitutional scheme of protection of fundamental rights in Sri Lanka conforms to the purposes referred to above. Your answer should be supported by relevant theoretical and case law authorities.

(29 Marks)

4. 'It is quite common under codified constitutions for the executive to propose and the legislature to approve appointments to the higher judiciary. But, with the adoption of the Nineteenth Amendment to the Constitution, a strange phenomenon has appeared and in that legitimate questions are being raised as to the legitimacy of appointments to the higher judiciary in the country. There are more than one casualty of constitutional principles in the matter.'

Do you agree? Discuss in relation to independence of the judiciary in Sri Lanka. Your discussion should include suggestions as to the means of strengthening the independence of the judiciary in Sri Lanka.

(29 Marks)
