

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW BACHELOR OF LAWS EXAMINATION, YEAR II
(Online) - 2021

Constitutional Law II

(Three Hours)

Total Number of Questions: 06

Answer **Three (03)** questions and no more **including Question number 1.**

(Candidates will be penalized for illegible handwriting.)

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1. Rawana is the Mayor of the Municipal Council (MC) of Diamond, the capital of Pearl. In July 2021, Disalaa, the president of the Traders' Association, had a heated argument with Rawana. Rajini, a journalist, reported this incident in a newspaper. At a press conference, Rawana stated that, at the request of residents, the MC intends to establish a Community Centre. He further stated that this Centre will provide essentials such as food, shelter, and other basic supplies at times of emergencies.

A by-law passed by the MC provides for the acquisition of privately owned land. The by-law provides that, '*The municipal council may acquire any private land, temporarily or permanently, for whatever purposes which relate to community activities*'. In September 2021, the MC acquired some privately owned land under this by-law, including lands owned by Disalaa and Rajini. Their properties are located close to the capital. A law passed by the central government provides that, '*Any private land acquired by local government authorities shall be used only for public purposes.*'

Later, it was found that the MC intends to build a City Centre to establish shopping malls and entertainment places for hire at a high rate. Disalaa and Rajini wish to challenge the validity of the by-law made by the MC. They further claim that the MC of Diamond should be dissolved for its abuse of power.

Assume that the legal regime of local government authorities of Pearl is similar to that of Sri Lanka. Advise Disalaa and Rajini.

2. Federal constitutions balance centripetal and centrifugal forces through institutional design. This results in the diversity of federal structures with each constitution boasting of unique features. However, the exact nature of federalism can also change based on how the various institutional actors interpret and enforce the constitutional provisions in practice.

Critically analyse this statement comparing the federal structures in two jurisdictions of your choice.

3. The judicial interpretation of the Thirteenth Amendment to the Constitution of Sri Lanka 1978 has been influenced by the constitutional provisions on the unitary nature of the state and the sovereignty of the people. The interpretation of these provisions has been further influenced by the judicial approach to the struggles of ethnic minorities for power sharing in the post-independence period.

Do you agree? Evaluate the above statement in light of the majority opinion and the dissenting opinions of *In Re Thirteenth Amendment to the Constitution* (1987).

4. The Governor of the Western Provincial Council (WPC) has received several complaints regarding maladministration by the Council. Thus, the Governor wrote to the Chief Minister of the WPC seeking reasons as to why the Council ought not to be dissolved. The Chief Minister advised the Governor against dissolution. Later, the Governor sought advice from the President on the same matter. The President advised him in favour of dissolution notwithstanding the fact that the Chief Minister of WPC enjoyed the support of a majority of members of the WPC. The next day, at a press conference, the Governor stated that he intends to dissolve the WPC as directed by the President. The Governor further stated that the decision cannot be the subject of judicial review. However, the Chief Minister was of the opinion that exercising the power to dissolve the WPC is subject to procedural requirements. Later, the Chief Minister consulted with the members of the WPC and decided to proceed with the removal of the Governor from office.

Discuss the constitutional validity and propriety of the actions and decisions of the Governor and the President with reference to the relevant constitutional provisions and decided cases.

5. The Divisional Secretary of Kandy published a notice under the Land Acquisition Act to acquire land for a provincial school. A subsequent notice was issued calling for objections against the acquisition to be sent to the Secretary, Ministry of Education at the Centre. The Chief Minister of the Central Provincial Council contended that the subject of education and the construction and maintenance of educational buildings and playgrounds are matters devolved to the provincial councils. The Chief Minister decides to file an action in the Provincial High Court challenging the actions of the Divisional Secretary of Kandy. Meanwhile, the Central Government released a policy regarding the construction and maintenance of educational buildings and playgrounds applicable for all government and semi-government schools.

The Chief Minister of the Central Provincial Council seeks your advice with regard to the scope of the legislative authority of the provincial councils and the jurisdiction of the Provincial High Court in light of the above situation. Advise the Chief Minister. Support

your answer with reference to relevant constitutional provisions, legislative enactments, and case law.

6. Dr. Rajendra is an Ayurvedic medical practitioner. For several years, he served as a Commissioner attached to the Provincial Health Office of the North-Central Province. Upon secondment, he was appointed to the Provincial Health Office of the Western Province as the Chief Coordinator of a programme for improving immunity among persons infected with COVID 19. While serving in the Western Provincial Office, the Chief Minister pressured Dr. Rajendra to select the supplier who made the highest bid in response to a call for tenders for the supply of Komarika. Dr. Rajendra, however, chose the supplier who made the lowest bid.

On the advice of the Chief Minister, the Governor directed the Provincial Public Service Commission in the Western Province to transfer Dr. Rajendra to a remote area within the province. He further instructed the Provincial Public Service Commission to appoint a new Chief Coordinator to implement the above said programme. Accordingly, Dr. Nirmalee is appointed as the new Chief Coordinator by the Commission. In making the appointment, the Commission overlooks Dr. Nalani, who is well-qualified for the post. She complains to the Chief Minister that the Governor and the Western Provincial Public Service Commission have overstepped their powers in appointing Dr. Nirmalee. Dr. Nirmalee is the daughter -in-law of a member of the Western Provincial Council.

Meanwhile, Dr. Rajendra has refused to accept the transfer. He claims that the decision of the Governor is unlawful on the basis that he does not belong to the service coming under the purview of the Provincial Public Service Commission of the Western Province. He further argues that he is in fact, attached to the Provincial Public Service of the North-Central Province and is presently working in the Western Province only on secondment.

Advise Dr. Rajendra and Dr. Nalani on challenging the decisions of the Governor and the Provincial Public Service Commission. Support your answer with relevant case law.
