

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
MASTER OF LAWS DEGREE EXAMINATION – TRIMESTER II -
2022/24

Constitutional Law – 1094
(Three Hours)

Total number of questions:04

Answer any Three questions
(Candidates will be penalized for illegible handwriting)

Question 01

‘The principle of the separation of powers only has meaning within an account of the state. It is through reflection on the point of the state that we gain an understanding of the structures, instruments, and skills that are required for the state to function successfully. And it is only through consideration of what is necessary for the successful functioning of the state that we can appreciate the wisdom of the divisions and connections that have long been held to characterize the separation of powers.’

N W Barber

Do you agree? Drawing examples from constitutional developments in Sri Lanka, compare and contrast the liberty model and efficiency model for the Separation of Powers. In your answer, discuss whether the approach to the Separation of Powers has evolved under the Second Republican Constitution of 1978.

(100 Marks)

Question 02

“The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and easily repealed. A Constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Charter of Rights, for the unlimiting protection of individual rights and liberties. Once enacted, its provisions can't be easily repealed or amended. It must, therefore, be capable of growth and development over time to meet the new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these conditions in mind.”

Dickson J in *Hunter at al v The Southam Inc.* 1984 11 DLR 641 at 649.

Do you agree? Using approaches to constitutional interpretation and relevant constitutional theories, explain the reasons for your answer. (100 Marks)

Question 03

The Second Republican Constitution of 1978 of Sri Lanka has been amended on twenty-one occasions. However, many constitutional issues, that undermine respect for Constitutionalism in Sri Lanka, remain unresolved.

Analyse the above statement in relation to power-sharing OR the Executive in Sri Lanka.

(Marks 100)

Question 04

Kamalini has diabetes and has been attending the clinic at the nearest General Hospital for six years for treatment. In the last three months, the hospital has not provided her with her usual medication on the basis that they have run out of medicine for the clinic. In purchasing medication, many patients have incurred heavy debts. The next clinic day, together with Geetha, another patient who attends the same clinic, Kamalini organizes a protest outside the hospital to demand the regular supply of medication. Deeply moved by the peaceful protest, the nurses attached to the clinic also join the protest during their lunch break. Within a few hours, the police arrest the protestors and detain them overnight. During this time, many of the protestors do not have access to their medication and suffer serious complications. The next day, three of the protestors, including Kamalini, are rushed to the General Hospital. Kamalini falls into a coma. Meanwhile, the ten nurses who participated in the protest have been asked to present themselves for a disciplinary hearing against them for insubordination. The Nurses Union issues a press release stating that this hearing is politically motivated.

During the same time, in Kamalini's village and in three adjoining villages, farmers are agitated by the announcement that a company has been granted a lease to quarry rocks in state land. Most villagers rely on the forest for their subsistence. They are also concerned that quarrying at an industrial scale will harm the waterways and impact the forest cover. Sarath, Kamalini's spouse, is one of the farmers affected. Together with two other farmers, Ismail and Rani, he intends to try to prevent the grant of the lease to the company for quarrying in that area.

Analyse the fundamental rights protections that ought to be available to several parties in the above situation as well as the availability of a judicial remedy for each of them for the violation of their fundamental rights. You may refer to the Constitution of Sri Lanka to illustrate your answer.

(100 Marks)