INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This examination consists of two parts: Part I and Part II.
3. Students must answer both parts.
4. In Part I of the examination, students must answer Section A and either Section B.1 or B.2.
5. In Part II of the examination, students must answer Section C and either Section D(Q1) or D(Q2).
6. This paper consists of SEVEN (7) pages. Please make sure you have them all.
PART I – Professor W Freedman

In this part of the examination students must answer both Section A and Section B

SECTION A

Assume that Mr Patrick De Lille is a member of the National Assembly. On 1 April 2011, the National Assembly held a debate on the manner in which Parliament’s travel office was being administered. During this debate Mr De Lille alleged that six members of the National Assembly, all of whom came from the majority party and all of whom he named, had abused their travel allowances and that they were, therefore, guilty of corruption.

Mr De Lille’s allegations caused a great deal of anger amongst the members of the National Assembly and especially amongst the members of the majority party. The National Assembly, therefore, adopted a resolution appointing an ad hoc committee to investigate Mr De Lille’s allegations and to recommend what steps, if any, should be taken against him.

The ad hoc committee investigated Mr De Lille’s allegations and came to the conclusion that they were “objectionable and unjustified”. It recommended, therefore, that Mr De Lille should be instructed to withdraw his allegations; that he should be ordered to apologise to the members he named; and that he should be suspended from the National Assembly for a period of 30 days without pay.

The National Assembly accepted the ad hoc committee’s recommendations and suspended Mr De Lille. After he was suspended, one of the members Mr De Lille named, Ms Thandi Yengeni, announced that she intended suing Mr De Lille for defamation. In her announcement Ms Yengeni explained that she was suing Mr De Lille, not because he had accused her of corruption during the debate in the National Assembly, but rather because he had made the same accusation during an interview with the SABC at its television studios that night.
Mr De Lille has now approached you for advice. He wants you to advise him on the following two issues:

(a) First, Mr De Lille wants to know whether the National Assembly’s decision to suspend him for making an “objectionable and unjustified” speech infringes section 58(1) of the Constitution. Section 58(1) provides that:

“Cabinet members, Deputy Ministers and members of the National Assembly have freedom of speech in the Assembly and in its committees, subject to its rules and orders”

[Total: 12 marks]

(b) Second, Mr De Lille wants to know whether the accusations he leveled against Ms Yengeni during his interview with the SABC are protected by section 58(2) of the Constitution. Section 58(2) provides that:

“Cabinet members, Deputy Ministers and members of the National Assembly are not liable to civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the Assembly or any of its committees”.

[Total: 8 marks]

TOTAL SECTION A: 20 MARKS
SECTION B

In this part of the examination students must answer either Question 1 or Question 2. Do not answer both questions.

QUESTION 1 [15 MARKS]

(a) Section 42(1) of the Constitution provides that:

“The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that –

(a) is prescribed by national legislation;
(b) is based on the national common voters roll;
(c) provides for a minimum voting age of 18 years; and
(d) results, in general, in proportional representation”

Write a note in which you explain how the party-list proportional representation electoral system works in South Africa. In your answer you must also set out the advantages and disadvantages of the party-list proportional representation electoral system.

[Total: 10 marks]

(b) Section 60 of the Constitution provides that:

“The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.”

The ten delegates from each province are divided into two categories, namely special delegates and permanent delegates.

Write a note in which you discuss the composition (membership) of the National Council of Provinces in respect of the special delegates only.

[Total: 5 marks]

TOTAL Q1: 15 MARKS
QUESTION 2 [15 MARKS]

In *Ex parte President of the Republic of South Africa, In re Constitutionality of the Liquor Bill 2000* (1) SA 732 (CC), the Constitutional Court set out the manner in which a court must go about determining whether a statute that has been passed by Parliament falls into its any of its legislative competences.

Write an essay in which you set out and discuss the judgment of the Constitutional Court in *Ex parte President of the Republic of South Africa, In re Constitutionality of the Liquor Bill supra*. In your essay you must also discuss the manner in which the Court interpreted section 44(2) of the Constitution.

TOTAL Q2: 15 MARKS

PART II – Professor Freedman and Ms Balogun

In this part of the examination students must answer both Section C and either Section D.Q1 or D.Q2.

SECTION C

Section 84(2)(i) of the Constitution provides that “the President is responsible for appointing ambassadors, plenipotentiaries and diplomatic and consular representatives”.

Acting in terms of section 84(2)(i) the President appointed Ms Yvonne Nkabinda as South Africa’s ambassador to the Kingdom of Swaziland. Ms Nkabinda’s appointment was for a period of three years from 1 January 2010 to 31 December 2014.

On 1 April 2012, Ambassador Nkabinda received an official letter from the President. In this letter, which was countersigned by the Minister of Foreign Affairs, the President informed Ambassador Nkabinda that he was terminating her appointment as an ambassador with effect from the end of April 2012.
He was terminating her appointment, the President explained, because he no longer trusted her. This is because she had deliberately and falsely informed the Prime Minister of Swaziland that the President supported the Swazi government’s decision to ban opposition political parties.

Ambassador Nkabinda is very upset about the President’s decision to terminate her appointment as an ambassador. She feels that the President has treated her unfairly. She is particularly upset about the fact that the President did not give her an opportunity to explain what she said to the Swazi Prime Minister before the President made his decision to terminate her appointment.

Ambassador Nkabinda has now approached you for advice. She wants to know whether the President’s decision to terminate her appointment is constitutionally valid. In particular, she wants to know whether the President was obliged to give her an opportunity to explain her position to him before he made his decision. Advise her.

TOTAL SECTION C: 20 MARKS
SECTION D

In this part of the examination students must answer either Question 1 or Question 2. Do not answer both questions

QUESTION 1

In the Cape Bar Council v JSC 2012 (4) BCLR 406 (WCC), the court held that the ‘JSC serves a unique and crucial function in the South African judicial system’. In the light of this quote write an essay in which you critically discuss the purpose, composition and workings of the Judicial Services Commission.

TOTAL Q1: 15 MARKS

OR

QUESTION 2

Write a note on the key elements of judicial independence as articulated in De Lange v Smuts NO 1998 (7) BCLR 779 (CC). [15 marks]

TOTAL Q2: 15 MARKS

TOTAL SECTION D: 15 MARKS