UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
EXAMINATIONS: NOVEMBER 2011

SUBJECT, COURSE AND CODE: CONSTITUTIONAL LAW
(LAWS2CS)

DURATION: 3 HOURS

External Examiner: Professor M Beukes
Internal Examiners: Ms A Strode
Professor W Freedman

TOTAL MARKS: 70

STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS, TO WRITE LEGIBLY.

PLEASE NOTE:
♦ This paper consists of SIX (6) pages. Please see that you have them ALL.
♦ This examination consists of TWO parts: Part I and Part II. Students must answer both parts.
♦ In Part I of the examination, students must answer Section A and either Section B.1 or B.2.
♦ In Part II of the examination, students must answer Section C and either Section D.1 or D.2.
PART I – Professor W Freedman

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

SECTION A [20 MARKS]

On 1 April 2011, the Minister of Home Affairs introduced the Electoral Amendment Bill in the National Assembly (this is a fictitious bill, but you must presume it exists for the purposes of this question). The Bill passed through the various legislative stages required by section 75 of the Constitution and was approved by both Houses on 1 October 2011. The Bill was then sent to the President for his assent and signature.

The President has examined the Bill and has reservations about the constitutional validity of some of its provisions. In particular, the President is concerned about the constitutional validity of clause 8. This clause provides:

(a) that a South African citizen may register as a voter only if he or she is able to complete a “voter registration form” by personally affixing his or her written signature to the form; and

(b) that a South African citizen may vote only if he or she has been registered as a voter and is able to complete a “voter identification form” by personally affixing his or her written signature to the form.

When the Minister introduced the Bill in the National Assembly, she explained that the purpose behind this clause was to prevent electoral fraud by matching the signature on the “voter identification form” with the signature on the “voter registration form”.

She also conceded, however, that clause 8 would also exclude any person who cannot write his or her name from registering as a voter and, therefore, from voting in the next general election (recent statistics indicate that there are approximately 3 million South Africans who are illiterate and who cannot, therefore, write their names).

The President is concerned that clause 8 might infringe the principle of the rule of law. He, therefore, approaches you for advice. Advise him as to whether clause 8 infringes the principle of the rule of law in light of the judgment of the Constitutional Court in New National Party v Government of the RSA 199 (3) SA 19 (CC). (20 marks)
SECTION B

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

QUESTION B.1 [15 MARKS]

“Section 58(1)(a) of the Constitution expressly guarantees freedom of speech in the Assembly (subject to its rules and orders). It is a crucial guarantee. The threat that a member of the Assembly may be suspended for something said in the Assembly inhibits freedom, of expression in the Assembly and must be therefore adversely impact on that guarantee.”

See Speaker of the National Assembly v De Lille 1999 (4) SA 863 (SCA) at para 20 per Mohammed CJ.

Write an essay in which you set out and discuss the judgment of the Supreme Court of Appeal in Speaker of the National Assembly v De Lille. In your answer you must discuss whether Parliament is still the “master of its own procedures”. (15 marks)

QUESTION B.2 [15 MARKS]

(a) Section 44 of the Constitution sets out the legislative authority of Parliament. This section grants Parliament: (i) exclusive legislative competences; (ii) concurrent legislative competences; and (iii) the power to intervene in areas of exclusive provincial competence.

Write a note in which you set and discuss Parliament’s:
(1) exclusive legislative competences; (6 marks)
(2) concurrent legislative competences; and (4 marks)

(b) The Constitution distinguishes between ordinary bills that do not affect the provinces (section 75 bills) and ordinary bills that do affect the provinces (section 76 bills). Write a brief note in which you set out the procedure that must be followed when Parliament passes a section 75 bill. (5 marks)
PART II – Ms A Strode

In this part of the examination students must answer **both Section C and either Section D.1 or D.2.**

SECTIONS [20 MARKS]

The Honourable Mr Justice John Deed, a member of the KwaZulu Natal High Court, has been accused of having an inappropriate sexual relationship with an advocate appearing in his court. Following these accusations, Freedom Under Law, a civil society organization, laid an official complaint with the Judicial Services Commission (JSC).

The JSC held a hearing in respect of this complaint in August 2011. Eleven of the JSC members attended the meeting, with the others sending apologies. Only one of the three members not attending sent an alternative member. The Premier of KwaZulu-Natal was not invited to attend the meeting as he was on an official visit to China at the time. The Judge President of KwaZulu-Natal did, however, attend.

Six of the eleven members of the JSC found that Justice Deed was not guilty of gross misconduct on the evidence before it. This is because they accepted Justice Deed’s explanation that he had informed his superiors of the situation and given them an assurance that the sexual relationship would not in any way affect the outcome of the particular matter.

The complaint was, accordingly, dismissed.

Freedom Under Law now wish to challenge the outcome of the JSC meeting. They want your advice on the following issues:

(a) Whether the JSC meeting met the requirement of a decision being taken by a ‘majority’ of its members in terms of section 178 of the Constitution of the Republic of South Africa, 1996? **(10 marks)**

(b) Whether the Premier was required to attend the JSC meeting in this instance? **(5 marks)**; and

(c) If the JSC had found Justice Deed guilty of gross misconduct, the steps that would have to be taken in terms of section 177 of the Constitution of the Republic of South Africa, 1996, to remove him from the bench. **(5 marks)**
SECTION D

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

QUESTION D.1 [15 MARKS]

In July 2011 the Public Protector issued a report in which she found that Ms Khumalo, the Minister of Cooperative Governance and Traditional Affairs, had breached the Executive Code of Ethics. Ms Khumalo breached the Executive Code of Ethics because:

(a) First, she spent R367 000 of the Department’s funds visiting her boyfriend in Switzerland. At the time her boyfriend was incarcerated at the Anstalten Hindelbank Prison in Berne. The Public Protector also pointed out that the Minister had informed the President that she was travelling to Switzerland on an official World Cup visit.

(b) Second, she spent R640 000 of the Department’s funds on accommodation at the “One and Only Hotel” in Cape Town for herself and her immediate staff.

(c) Third, she spent R55 793 of the Department’s funds on accommodation at the “One and Only Hotel” in Cape Town for Mr and Mrs Smith. According to the Minister, Mr Smith was her "father figure".

Critically discuss whether, given the constitutional principles regarding the individual accountability of cabinet ministers, Ms Khumalo ought to resign from the cabinet.

(15 marks)
QUESTION D.2 [15 MARKS]

“The traditional ‘checks and balances’ intended to control government and the use of power have developed over centuries. However, they have not always been effective. In particular, in parliamentary systems the relationship between the executive and legislature often leaves the majority in Parliament disinclined to exert control over the executive. Instead, it interprets its role as supporting the government.

This problem is exacerbated in systems like that in South Africa in which one party dominates and under an electoral system in which accountability to citizens is easily perceived as less important than accountability to party structures. Institutions like the Chapter 9s are intended to supplement the traditional methods of securing accountable government”.


In the light of the quote set out above, critically discuss the role of the Chapter Nine institutions in South Africa.  

(15 marks)