DURATION: 3 HOURS
TOTAL MARKS: 70

INTERNAL EXAMINER : PROF W. FREEDMAN
DR A. STRODE
MS V. BALOGUN

INDEPENDENT MODERATOR : PROF K. GOVENDER

INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly

2. This paper consists of FIVE (5) pages. Please make sure you have them all.

3. This examination consists of three sections: Section A, Section B and Section C.

4. Students must answer all three sections.

5. Each section must be answered in a separate booklet.

6. Appropriate reference to relevant case law and academic opinion will enhance your mark.
On 1 April 2012, Parliament enacted the Housing Development Act 33 of 2012 (this is a fictitious Act, but you are to presume it exists for the purposes of this question). The purpose of this Act is to facilitate the development and delivery of low cost housing.

Chapter III of the Act provides that the MEC responsible for housing in each province is required to establish a Provincial Housing Board. Chapter III also provides that these Provincial Housing Boards are required to initiate and implement low cost housing schemes in their respective provinces.

Chapter V of the Act sets out the powers of the Minister of Housing in the national government. This Chapter provides, *inter alia*, that the Minister of Housing may amend any section of the Act by publishing the amendments in the *Government Gazette* and by tabling them in the National Assembly.

Over the past year or so it has become apparent to the Minister that most of the Provincial Housing Boards are failing to carry out their responsibilities in an efficient and effective manner. In order to remedy this situation, the Minister has made amendments to Chapter III of the Act. These amendments have been published in the *Government Gazette* and tabled in the National Assembly.

As a result of these amendments, the Provincial Housing Boards have been abolished and their powers and functions have been transferred to a newly created National Housing Board, whose members are appointed by the Minister. The MEC for Housing in KwaZulu-Natal is unhappy with the Minister’s decisions. He believes that Chapter V of the Act infringes the doctrine of separation of powers and is therefore unconstitutional.

The MEC approaches you for help. He wants you to answer the following questions:

(a) First, as the MEC cannot find any mention of the doctrine of the separation of powers in the Constitution itself, he requires knowing which part of the Constitution the doctrine comes from.  

[2 Marks]

(b) Second, the MEC has been told that the doctrine of separation of powers is often divided into four principles. He wants to know what these principles are and what they mean.  

[8 Marks]
(c) Third, the MEC wants to know whether Chapter V of the Housing Development Act infringes the doctrine of the separation of powers. Advise him.

[15 Marks]

[TOTAL SEC A: 25 MARKS]

PART B – Dr A Strode

After marrying his sixth wife, Ms Pansy Nkabinda, President Zuma decided to celebrate the occasion by granting a presidential pardon to certain categories of prisoners. The pardon, which was issued on 14 February 2011, reads as follows:

“In terms of section 84(1)(j) of the Constitution of the Republic of South Africa, 1996, I, Jacob Gedleyhlekisa Zuma, hereby grant special remission of the remainder of their sentences to all grandmothers in prison on 14 February 2010, with minor grandchildren under the age of twelve (12) years: Provided that no special remission of sentence will be granted for any of the following offences or for any attempt to commit such an offence: murder, culpable homicide, robbery with aggravating circumstances, assault GBH, child abuse, rape and, any other crimes of a sexual nature.”

Mr Tommy Zulu, a 68 year old grandfather in prison, believes that this pardon unfairly discriminates against men. Acting on this belief, he sends a letter to the President in which he sets out his concerns regarding the category of prisoners who were pardoned. In addition, he also asks the President to include all grandfathers with minor children in the pardon or to grant him an individual pardon as he is in jail for fraud and has three grandchildren under the age of 12. In support of his application, he explains that his wife, in whose care the grandchildren have been placed, is also 68 years old, has high blood pressure and diabetes and struggles to care for their grandchildren.
Unfortunately, Mr Zulu does not receive a reply to his letter. On the 25 September 2012 he writes to the President again. In this letter he inquires as to whether the President received his previous letter and, if so, when he can expect to receive a response to that letter. On the 23 January 2013 he receives a letter from the Minister of Justice and Constitutional Development simply stating that the matter is “under consideration”. Since then he has heard nothing further. Mr Zulu is distressed as he feels his grandchildren are not being properly cared within the extended family. He approaches you for advice.

He wants to know whether:

(a) the President is acting as Head of State or Head of the Executive in exercising these powers to pardon prisoners?  

[2 Marks]

(b) there are any differences in the nature of the President’s powers when he acts as Head of State as opposed to Head of the Executive?  

[3 Marks]

(c) he can apply for an order compelling the Minister of Justice and Constitutional Development to expedite the taking of any preliminary steps which are necessary to enable the President to exercise his powers in terms of section 84(1)(j)?  

[10 Marks]

In addition, Mr Zulu also wants you to answer the following questions:

(d) First, can he approach the Constitutional Court directly for an order declaring the President’s decision to be unconstitutional and invalid on the grounds that it violated section 9 of the Bill of Rights or must he first approach the High Court?  

[5 Marks]

(e) Second, if he did approach the High Court first for an order declaring that the President’s decision to be unconstitutional and invalid on the grounds that it violated section 9 of the Bill of Rights, would such an order have to be confirmed by the Constitutional Court? Explain fully  

[5 Marks]
PART C – Ms Balogun

(a) Section 49(1) of the Constitution provides that:

“The National Assembly is elected for a term of five years.”

Write a note in which you briefly discuss the circumstances in which the National Assembly may be dissolved before its term expires.

[4 Marks]

(b) 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.

Discuss the following:

(i) Parliament’s exclusive legislative competences;

[6 Marks]

(ii) Parliament’s concurrent legislative competences;

[2 Marks]

(iii) Parliament’s power to intervene in areas of exclusive provincial competence.

[6 Marks]

(iv) How conflicts between national and provincial legislation falling with the functional areas of concurrent national and provincial competence are resolved.

[2 Marks]

[TOTAL SEC C: 20 MARKS]

TOTAL FOR PAPER: 70 MARKS