UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG CAMPUS
SCHOOL OF LAW: DECEMBER 2016 MAIN EXAMINATION
MODULE AND CODE: CONSTITUTIONAL LAW
(LAWP2CS/LAWS2CS/LAWS3CS)
PART-TIME & FULL-TIME

Page 1 of 9

DURATION: 3 HOURS 
TOTAL MARKS: 70

INTERNAL EXAMINERS : PROFESSOR D.W FREEDMAN 
: DR A. STRODE 
: ADV V.A BALOGUN 
: MS S. SONI

INTERNAL MODERATOR : PROFESSOR M. KIDD

INSTRUCTIONS

1. This paper consists of NINE (9) pages. Please make sure you have them all.

2. Students must answer all the questions in this paper.

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

4. Students must hand-in this exam paper together with their answer books.
SECTION A:

THE LEGISLATURE

In this section students must answer Question 1 and Question 2.

QUESTION 1

On 1 April 2016, the National Assembly passed the National Prosecuting Authority Amendment Bill. The purpose of this Bill is to dissolve all special investigating units that currently form a part of the National Prosecuting Authority and to transfer their assets, personnel and records to the South African Police Service. After the National Assembly passed the Bill, it was referred to the Chairperson of the National Council of Provinces who then forwarded it to the Standing Committee on Justice, Safety and Security.

The Standing Committee carefully examined the Bill and after some discussion agreed that public hearings should be held. In addition, the Standing Committee also agreed that these public hearings should not be hosted by the Standing Committee itself, but rather by each provincial legislature. The Bill was then referred to the Speaker of each provincial legislature together with a request to invite members of the public to make oral and written submissions to the provincial legislature in question.

The Chairperson of the Standing Committee has recently received a report on the manner in which each provincial legislature has responded to the Standing Committee’s decision that public hearings should be held by the provincial legislatures. This report indicates that while members of the public were invited to make both oral and written submissions in the Eastern Cape, the Northern Cape and Western Cape, they were not invited to do so in any of the other six provinces largely as a result of the time pressure of time.

After reading this report, the Chairperson of the Standing Committee is concerned that the processes followed by the various provincial legislatures may not have fulfilled the requirements of section 72(1)(a) and section 118(1)(a) of the Constitution. Section 72(1)(a) provides that “the NCOP must facilitate public involvement in the legislative and other processes of the Council and its Committees” and section 118 (1)(a) provides that “a provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees”.

Continued/…
(a) The Chairperson of the Standing Committee now approaches you for advice. He wants to know whether the requirements of section 72(1)(a) and 118(1)(a) of the Constitution have been fulfilled? In light of the Constitutional Court’s judgment in the Doctors for Life International v Speaker of the National Assembly 2006 (6) SA 416 (CC), advise him.

[Total for Sec A Q1 (a): 12 marks]

(b) The reports received from the Eastern, Northern and Western Cape legislatures indicate that members of the public in these provinces are overwhelmingly opposed to the Bill. The Chairperson wants to know whether the NCOP is obliged to accept the views of the public. Advise him.

[Total for Sec A Q1 (b): 4 marks]

(c) The Chairperson has also been told that South Africa’s system of democracy is made up of both representative and participatory elements. He wants to know what is meant by a representative democracy and what is meant by a participatory democracy. Advise him.

[Total for Sec A Q1 (c): 4 marks]

[TOTAL FOR SEC A Q1: 20 MARKS]

QUESTION 2

Legislative authority is divided among the national, provincial and local spheres of government. An important consequences of this division is that a legislature may not pass legislation that falls outside its area of competence. If it does, that legislation will be unconstitutional and invalid.

(a) Write a brief note in which you explain what is meant by the concept of legislative authority. In your answer you must list the national, provincial and local organs of state in which legislative authority has been vested by the Constitution.

[Total for Sec A Q2 (a): 2 marks]
(b) In terms of sections 42(3) read with section 55 of the Constitution, and section 42(4) read with section 68 briefly list any two the functions of the National Assembly and any two functions of the National Council of Provinces.

[Total for Sec A Q2 (b): 4 marks]

(c) Write a note in which you set out and discuss Parliament’s power to intervene in areas of exclusive provincial competence in terms of section 44(2) of the Constitution. In your answer you must explain how the Constitutional Court has interpreted the term “necessary” in section 44(2).

[Total for Sec A Q2 (c): 4 marks]

[TOTAL FOR SEC A Q2: 10 MARKS]

SECTION B:

DEMOCRACY AND CO-OPERATIVE GOVERNMENT

In this section students must answer all five MCQ questions in their answer books. Each question counts one (1) mark. There is no negative marking.

QUESTION 3

3.1 Which of the following statements is incorrect?
   (a) In a direct democracy there is a combination of elected and unelected representatives.
   (b) In a direct democracy citizens participate continuously in the processes of government.
   (c) In a direct democracy there is no distinction between the state and civil society.
   (d) In most modern states, direct democracy takes the form of petitions, pickets, and referenda.
3.2 Which of the following statements is incorrect?
(a) A unitary state is one in which regional and local governments derive their powers directly from the national government and not from the constitution.
(b) A unitary constitution gives the national government a dominant role in the process of government.
(c) A unitary constitution gives the national government the power to prevail over regional and local government.
(d) South Africa is an example of a unitary state.

3.3 Which of the following statements is incorrect?
(a) A federal state is one in which the regional and local governments derive their powers directly from the constitution and not from the national government.
(b) A federal constitution gives regional and local governments a dominant role on the process of government.
(c) A federal constitution protects regional and local governments from the national government through constitutional rigidity and judicial review.
(d) A federal state prevents a concentration of power in the hands of the national government and brings government closer to the people.

3.4 Which of the following statements is incorrect? A cooperative or integrated model of federalism has the following features:
(a) Legislative and executive powers are not strictly divided between the national and regional governments. There are many areas of concurrent competence.
(b) Provincial governments are represented in the national legislature and participate directly in the national legislative process.
(c) The constitution expressly provides for a formal system of intergovernmental co-ordination and cooperation.
(d) The power to raise revenue by imposing taxes is conferred on both the national and provincial governments.

3.5 Which of the following statements is incorrect?
(a) The functional areas of exclusive national competence are set out in Schedule 3 of the Constitution.
(b) The functional areas of concurrent national and provincial competence are set out in Schedule 4A of the Constitution.
(c) The functional areas of concurrent national, provincial and local competence are set out in Schedule 4B of the Constitution.
(d) The functional areas of exclusive provincial and local competence are set out in Schedule 5A and B of the Constitution.

[TOTAL FOR SEC B Q3: 5 MARKS]
SECTION C:

THE EXECUTIVE AND THE JUDICIARY

In this part of the examination students must answer Question 4 and Question 5.

QUESTION 4

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 Jane Qwelane as South Africa’s ambassador to Uganda. Ms Qwelane’s appointment was for a period of five years effective from 1 January 2015 to 31 December 2019.

On 1 April 2016, Ambassador Qwelane received an official letter from the President. In this letter, which was counter-signed by the Minister of International Relations, the President informed Ambassador Qwelane that he had been advised by the Minister to terminate her appointment as an ambassador and that he had accepted the Minister’s advice. Her appointment as the ambassador to Uganda, therefore, would come to an end on 30 April 2016.

The reason why the Minister had advised him to terminate her appointment, the President explained further, is because she had allegedly falsely informed the Prime Minister of Uganda that the President supported the Ugandan Government’s decision to ban all Lesbian, Gay, Bisexual and Transsexual organisations in the country. The President, therefore, no longer trusted Ambassador Qwelane as her behavior was inappropriate given the constitutional right to equality on the basis of sexual orientation in South Africa.

Ambassador Qwelane is very upset about the President’s decision to terminate her appointment as an ambassador. She feels that the President and the Minister of International Relations have 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 Prime Minister of Uganda before he made the decision to terminate her appointment as an ambassador. She approaches you for advice.
Ambassador Qwelane wants to know whether:

(a) the President was acting as Head of State or Head of the Executive when he terminated her appointment?

[Total for Sec C Q4 (a): 2 marks]

(b) she was entitled to a hearing before the President terminated her appointment?

[Total for Sec C Q4 (b): 10 marks]

(c) if she is entitled to a hearing, whether she should proceed against the Minister of International Relations or the President?

[Total for Sec C Q4 (c): 8 marks]

[TOTAL FOR SEC C Q4: 20 MARKS]

QUESTION 5

Describe the circumstances in which a litigant may approach the Constitutional Court for permission for direct access to the Court.

[TOTAL FOR SEC C Q5: 10 MARKS]
SECTION D:

THE NATIONAL PROSECUTING AUTHORITY

In this section students must answer all five MCQ questions in their answer books. Each question counts one (1) mark. There is no negative marking.

QUESTION 6

6.1 Which of the following statements is correct? The National Director of Public Prosecutions (NDPP) is appointed by:
(a) the President in his capacity as Head of State.
(b) the Public Protector.
(c) the President in his capacity as Head of the Executive.
(d) the Chief Justice of the Republic.

6.2 Which of the following statements is correct? The National Prosecuting Act was passed in:
(a) 1984.
(b) 1998.
(c) 1926.
(d) 1924.

6.3 Which of the following statements is incorrect? In terms of section 179(2) of the Constitution, the National Prosecuting Authority (NPA) has the power:
(a) to institute and conduct criminal proceedings on behalf of the State.
(b) to carry out any necessary functions incidental to instituting and conducting such criminal proceedings (this includes investigation).
(c) to review a court’s decision(s).
(d) to discontinue criminal proceedings.
6.4 Which of the following statements is incorrect? Section 9 of the National Prosecuting Authority Act provides that in order to be appointed as a Director of Public Prosecutions (DPP), including the NDPP, a person must:
(a) possess a legal qualification allowing him/her to practice in South Africa.
(b) be a fit and proper person, with due regard to his/her experience, conscientiousness and integrity.
(c) be an unrehabilitated insolvent.
(d) be a South African citizen.

6.5 Which of the following statements is correct? In Democratic Alliance v President of the RSA 2013 (1) SA 248 (CC), the Constitutional Court held that:
(a) the fitness requirement is an “objective” and not a “subjective” one and therefore may be tested by courts.
(b) the fitness requirement is a “subjective” and not an “objective” one and therefore may be tested by courts.
(c) the fitness requirement is an “objective” and not a “subjective” one and therefore may not be tested by courts.
(d) the fitness requirement is an “irrelevant issue” and does not need to be tested by the courts.

[TOTAL FOR SEC D Q6: 5 MARKS]