UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG
EXAMINATIONS: NOVEMBER 2010

SUBJECT, COURSE AND CODE: CONSTITUTIONAL LAW
(LAWS2CS)

DURATION: 3 HOURS TOTAL MARKS: 70

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

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

PLEASE NOTE:
This paper consists of FIVE (5) 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

On 1 April 2010, the Minister of Agriculture introduced the Abattoirs Control Bill in the National Assembly (this is a fictitious Bill, but you are to assume it exists for the purposes of this question). The purpose of this Bill is to establish and maintain essential national hygiene standards in respect of abattoirs.

Clause 3 of the Bill provides that no person may slaughter an animal at any place other than a registered abattoir. Clause 9 provides that an application for the registration of an abattoir must be made to the Director-General of the national Department of Agriculture and that the Director-General may only issue a registration certificate if an abattoir complies with the relevant hygiene standards set out in the Schedules to the Bill.

Clause 15 provides that when the Director-General registers an abattoir he must register it as an Export Abattoir; a National Abattoir; or a Local Abattoir. Export Abattoirs supply meat to foreign countries; National Abattoirs supply meat across the country as a whole and Local Abattoirs supply meat in the province in which they are located.

The Bill passed through the various legislative stages required by section 76(1) of the Constitution and was approved by both Houses on 1 October 2010. 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 clause 3 read together with clause 9 and clause 15.

The President believes that these sections may infringe upon the provincial legislatures’ exclusive legislative competence and could, therefore, be unconstitutional. This is because the competence “abattoirs” falls within the functional area of exclusive provincial competence listed in Part A of Schedule 5 of the Constitution.

The President approaches you for advice. He wants to know if clause 3 of the Abattoirs Control Bill read together with clause 9 and clause 15 can constitutionally fall within the legislative competence of Parliament. Advise him. (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

(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. (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.”

Write a note in which you discuss the composition (membership) of the National Council of Provinces. (5 marks)

QUESTION B.2

The Constitution distinguishes between four categories of bill. These are:
(a) bills amending the Constitution (“section 74 bills”); 
(b) ordinary bills that do not affect the provinces (“section 75 bills”); 
(c) ordinary bills that do affect the provinces (“section 76 bills”); and 
(d) money bills (“section 77 bills”).
For each of these categories there is a different procedure which must be followed before the bill in question can become an Act of Parliament

Write an essay in which you set out the procedure that must be followed by the so-called “section 75 bill” before it can become an Act of Parliament.

In your essay you must also set out and discuss the test that must be applied in order to determine whether a bill should be classified as a section 75 bill or a section 76 bill.

In your discussion you must refer to the Constitutional Court’s judgment in Tongoane v Minister for Agriculture and Land Affairs [2010] ZACC 10. (15 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.

SECTION C

In January 2008 twenty five members of an extremist white supremacy group applied to the President for a pardon in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, 1996. All twenty five were convicted during the apartheid era of a range of crimes including murder, rape and arson which they claim were committed with a “political objective”.

Despite claiming that their crimes had a “political objective”, none of them applied for amnesty from the Truth and Reconciliation Commission (TRC). This is because they believed that the truth and reconciliation process was partial and fundamentally biased towards the ANC and other liberation party members.

The twenty three men and two women now believe that they should be granted a presidential pardon as part of a broader process of national reconciliation. In support of their application, they point out that the President has recently pardoned a number of ANC and PAC members who were denied amnesty by the TRC.
Despite having submitted their applications for presidential pardons in January 2008, none of their applications appears to have been considered by the President. The only correspondence they have received from the Office of the President is an acknowledgment of their application. Over the past two years they have written several follow up letters to the Minister of Justice who has simply confirmed that the matter is under review and that a decision will be forthcoming.

The applicants are frustrated with the delay and they approach you for advice. They want you to advise them on the following two issues:

(a) First, can they lodge an application against the Minister of Justice for failing to diligently process their applications? and

(b) Second, does the Constitution impose any constraints on the President when he exercises this power?  

(20 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

There has been an intense and on-going debate on the transformation of the composition of the judiciary. The Cape Times reported on the 11 June 2009 that there were 205 judges, of these 54.6 % were classified as black. Twenty percent of the judges were female. Write an essay in which you discuss the process described in the Constitution for appointing judges and assess whether this process is able to ensure that the judiciary becomes more representative.  

(15 marks)

QUESTION D.2

Write an essay critically discussing the circumstances in which cabinet members are obliged to resign.  

(15 marks)