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**EXAMINATIONS OF \_\_\_\_\_ APRIL/MAY 2005**

**CODE AND NAME OF COURSE:** LA10B (LAW1020) - CONSTITUTIONAL LAW

**DATE AND TIME:**

**DURATION: 3 HOURS**

**INSTRUCTIONS TO CANDIDATES: This paper has 4 pages and 6 questions.**

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Answer any THREE (3) Questions. Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

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1. ANSWER **EITHER A OR B OR C**

Critically evaluate the impact of the saving law clauses in Commonwealth Caribbean constitutions on judicial review proceedings challenging the constitutionality of the mandatory death penalty.

**OR**

B. "Parliament is supreme and yet not supreme. The question is not whether it has the power to alter the Constitution, but whether the procedural means of achieving alteration required by the Constitution have been followed. This is a question of substance, not of form."

Discuss with reference to decided cases.

**OR**

C. "National goals and directive principles in a constitution are nonsense upon stilts. "

Discuss.

**PLEASE TURN OVER**

2. "The principle of separation of powers is not an overriding supra-constitutional principle, but a description of how the powers under a real Constitution are divided. Different constitutions apply this principle in their own ways and a court can concern itself only with the actual constitution and not with what it thinks might have been an ideal one."

Critically discuss whether decided cases from the Commonwealth Caribbean support this assertion.

3. "In constitutional democracies under the rule of law, the courts have assumed jurisdiction to hear and determine all disputes of a justiciable nature. The principle of equality before the law, where every man, whatever his rank or condition, is subject to the ordinary law, must result in every official from the Prime Minister down to a junior clerk having the same responsibility for every act done by him without lawful justification, as any other citizen."

Critically assess whether this statement accurately describes the application of the rule of law within Commonwealth Caribbean constitutional law.

4. Discuss the view that the Caribbean Court of Justice Treaty provides as much protection as the Constitutions of Commonwealth Caribbean countries, if not more, for the protection of the judiciary from executive pressure or interference.
5. Julia is an elected Member of Parliament in Jamcent, an independent Commonwealth Caribbean territory of your choice, and she is a member of the opposition party.

In January 2005, a private bill relating to the Anglican Church is laid in the House of Parliament. In the debate on the bill, Julia argues that the House has no authority to debate the bill because the proper procedure for the passage of a private bill was not followed.

Parliament has internal rules that all such private bills must be advertised in at least two newspapers prior to laying the bill in Parliament. There has been no such advertisement.

Julia goes on to attribute the failure to observe Parliament's own procedures to advice given by Mark, a Member of Parliament in the ruling party, to the Anglican Church, that advertisements were not required.

The Speaker of the House says that her words are unparliamentary. A motion is put to the House by Mark that Julia's statements are a violation of the privileges of the House and a contempt of the House, and that she should be suspended from Parliament for six months and deprived her of salary for that period.

There is a debate about the motion, but Julia is not permitted to participate in the debate. Mark participates in the debate, urges the House to adopt his motion and then votes in favour of the motion. Both the motion and the private bill are passed.

**PLEASE TURN OVER**

Julia wants to bring proceedings in the High/Supreme Court to challenge the validity of the private bill that was enacted and the decision of the House to hold her in contempt, suspend her from Parliament and deprive her of her salary for six months.

Advise Julia.

6. ANSWER **EITHER A OR B**

- A. Elections are held in Domtiga, an independent Commonwealth Caribbean state, on April 1, 2005. The Youth Party wins six seats, the Workers' Party wins seven seats, and the Vibes Party wins four seats. The Head of State invites Precious, the leader of the Youth Party, to form the new government and appoints her Prime Minister. He refuses to give any reasons for doing so.

The Constitution of Domtiga provides that the Prime Minister of Domtiga is to be appointed by the Head of State. The Constitution also provides that the Head of State should appoint as Prime Minister "a representative who appears to him likely to command the support of the majority of the elected Representatives." It further states that, in the exercise of these powers, the Head of State "shall act in his own deliberate judgment." The said Constitution also states:

"Where by this Constitution the Head of State is required to perform any function in his own deliberate judgment, or on the advice or recommendation of any other authority or person, the question whether the Head of State has so exercised that function shall not be enquired into in any court of law."

The Constitution also provides that the Head of State should appoint five Senators on the advice of the Prime Minister. The Head of State refuses to appoint the five persons proposed by Precious because all five were unsuccessful candidates in the elections. The Head of State claims that this does not conform to traditional constitutional practices.

Kingsley, who is the leader of the Workers' Party, wishes to challenge the Head of State's decision to appoint Precious as the Prime Minister. Precious plans to challenge the Head of State's decision not to appoint as senators the five persons she nominated.

You are asked to advise the Attorney General on whether the actions by Kingsley and Precious can succeed.

**PLEASE TURN OVER**

OR

- B.** Under a 2000 agreement, the sole lottery company in Guyana, which is a private company, pays to the Government of Guyana 20% of its annual profits. The Government uses the annual payment from the lottery company to make gifts to its party supporters. The Opposition parties repeatedly protest the Government's use of the payments as 'discriminatory'.

In 2004, a dissident group within the ruling party withdraws its support for their party in Parliament, and the Government is unable to pass the 2004 Appropriation Bill. There is civil unrest, and this includes street protests by public sector workers and others because of the government's failure to pay wages and to discharge its debts.

Fighting in the streets between political supporters of the various political parties led to numerous deaths. The police force is unable to contain acts of destruction of life and property.

Mr. Silvertongue, the leader of the ruling party, purports to vest executive powers in Commander Wildy, Chief of Guyana's Armed Forces. Immediately thereafter, Commander Wildy dissolves parliament, dismisses the government, appoints **six army officers as Ministers** of Government, and appoints himself Chairman of the self-designated Peoples' Revolutionary Council.

Commander Wildy seeks your advice on:

- (a) the constitutionality of his government; and
- (b) whether he can by decree, imprison Mr. Silvertongue for as long as it is necessary to restore internal stability, peace and tranquility in Guyana.

Advise Commander Wildy.

**END OF PAPER**